The Senate met at 1 p.m. and was called to order by the Honorable Mark Begich, a Senator from the State of Alaska.

PRAYER
The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.
Shepherd of souls, who neither slumbers nor sleeps, we seek the completeness that can only be found in You. Lift us above Earth's strident noises until we hear Your still small voice in our inmost being.

Lord, give the Members of this body the wisdom to permit their deep needs to drive them to You. Give them the wisdom to heal divisions and to liberate the oppressed. May Your presence break down every divisive wall and bring a spirit of unity. Silence disruptive voices that would ignite and inflame disunity. Today we again ask Your choicest blessings upon our military men and women and their families who give so much to keep us free.

We pray in the Name of Him who has suffered the following prayer:

To the Senate:
Under the provisions of rule 1, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable Mark Begich, a Senator from the State of Alaska, to perform the duties of the Chair.

Robert C. Byrd, President pro tempore.

Mr. Begich thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER
The Acting President pro tempore. The Senator from Michigan.

SCHEDULE
Mr. Levin. Mr. President, following the remarks of the leader, the Senate will resume consideration of the Department of Defense authorization bill. Under an agreement reached last week, there will be up to 40 minutes for debate prior to votes in relation to amendments relating to hate crimes. Those votes would be in relation to one amendment offered by Senator Leahy or his designee and three amendments offered by Senator Sessions. It is my understanding that we may be able to dispose of the Leahy amendment by a voice vote and that the managers are working on the Sessions amendment regarding Attorney General regulations. Upon the use or yielding back of all debate time, the Senate will proceed to a series of at least two rolloff votes and possibly up to four rolloff votes. The votes could occur in the 4 p.m. range. After the Senate disposes of those amendments, we will resume debate on the gun amendment offered by Senator Thune. Second-degree amendments are in order in the gun amendment. Also under the agreement reached last week, upon disposition of the Thune amendment, Senator Levin will be recognized to offer the Levin-McCain amendment relating to the F-22s.

I yield the floor.

RESERVATION OF LEADER TIME
The Acting President pro tempore. Under the previous order, the leadership time is reserved.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2010
The Acting President pro tempore. Under the previous order, the Senate will resume consideration of S. 1390, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1390) to authorize appropriations for fiscal year 2010 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Pending:
Thune amendment No. 1618, to amend chapter 44 of title 18, United States Code, to allow citizens who have concealed carry permits from the State in which they reside to carry concealed firearms in another State that grants concealed carry permits, if the individual complies with the laws of the State.

The Acting President pro tempore. The Senator from Nebraska.

CAP AND TRADE
Mr. JOHANNES. Mr. President, I rise to discuss an Agricultural Committee hearing that is scheduled later on this week. It is an important topic. The hearing is titled “The Role of Agriculture and Forestry in Global Warming Legislation.” I look forward to participating. This is the committee’s first effort this year to tackle the ongoing climate change debate. It is very important. Much of the discussion in both Houses of Congress has centered on potential new legislation and regulations relative to climate change. Any
kind of new climate-related law would have sweeping consequences that touch every corner of American life. Thus, I have made it clear that any climate change legislation should require a robust, open, and extensive debate on the Senate floor.

Numerous studies have now been released about cap and trade and affect on American life. Those studies also include agriculture. During last year’s debate over cap and trade, the Farm Bureau released a study stating that the legislation would result in a $40 to $80 increase in the cost to produce an acre of corn. That means higher input costs for livestock producers as well. That same study indicated the cost of producing soybeans would increase from $10 to $20 an acre. Wheat would jump $15 to $32 an acre.

According to one recent analysis, the Waxman-Markey cap-and-trade bill would also have a significant, if not severe, impact on agriculture. If the bill is enacted, as estimated by the Congressional Budget Office, the Department of Agriculture would lose $8 billion in the year 2012. By 2024, farmers stand to lose $25 billion. An eye-popping $50 billion would be lost by farmers by 2035. Gasoline and diesel costs are expected to increase by 58% percent. Electric rates would soar as high as 90 percent.

Agriculture is an energy-intensive industry. Those kinds of increased costs are certainly going to impact this business. These are not isolated studies. The American Farm Bureau Federation, the largest agricultural organization in the country, has also studied these costs. The Farm Bureau reported that if Waxman-Markey were to become law, input costs for agriculture would rise by $5 billion, compared to a continuation of current law. Other studies have indicated in various ways that the likely impact of cap and trade would include increased electricity and heat costs, decreased fertilizer prices, higher gas, and higher diesel prices. Different studies come up with varied numbers, but they all paint the same picture—agriculture loses.

None of this should surprise anyone because the bill is specifically designed to increase the cost of energy. In fact, according to the Congressional Budget Office:

Reducing emissions to the level required would be accomplished mainly by stemming demand for carbon-based energy by increasing its price.

We also know farmers in America’s heartland get hit worse by these high energy costs, and we know that USDA agrees. Last week, USDA officials indicated in testimony to the Senate Environment and Public Works Committee that as a result of cap-and-trade legislation:

The agriculture sector will face higher energy and input costs.

AtArgument last, all of this tells us that this is an enormously complicated issue with significant economic ramifications, perhaps as complex as any we will deal with this Congress, not to mention very costly. Given the gloomy predictions about cap-and-trade proposals, it seems clear to me that we need to take an approach that is extensive, methodical, and well thought out. We need more specific and clear analysis to make sure we know—and, most importantly, other people know—exactly what passage of this bill will mean.

As I mentioned, USDA knows that cap and trade will increase energy prices. Here is the kicker: At the same time the Department also has indicated:

USDA believes the opportunities for climate legislation will likely outweigh the costs.

Let me say that again: USDA says energy prices will increase, but they think the opportunities for climate change legislation will outweigh the costs. This kind of claim must be based on hard data or it is reckless to make the claim. Such a sweeping conclusion should not be drawn unless the Department is studied and analyzed. If USDA has conducted analysis of increases in farm input costs and weighed them against the measured opportunities, then I applaud their efforts. But if that is the case, it is misleading to say that the Department has not shared the analysis, despite having testified before the Senate twice in the 2 weeks preceding this week.

Having served as the Secretary of Agriculture, I know that the USDA has an outstanding team of economists with expertise to do this kind of analysis. That is why last week I sent a letter to the current Ag Secretary, Tom Vilsack, who will testify at the Ag Committee hearing this week. The letter requested USDA to provide the following:

A State-by-State analysis of the cost of cap and trade on ag industries; a crop-specific analysis; an analysis of how the legislation would impact livestock producers; finally, USDA’s assessment of how many acres will be taken out of production as a result of the bill and what impact this will have on food availability, the cost of food, fiber, feed, biofuels, and other ag products.

Without detailed analysis, USDA’s assertions about costs and benefits will simply ring hollow. Why wouldn’t the USDA provide this information? Isn’t this why the department exists? Ag or anything to be directly impacted by the legislation. Yet we have no analysis from the people’s department. If the people who feed the world are going to get hammered by this legislation, we should know about it. We should debate it, and we should vote on it on this floor.

I hope the third time is the charm for the USDA, and they bring more than rhetoric to Wednesday’s hearing. Cap and trade will not affect States, crops or regions equally. It will have a different impact on a corn farmer in Nebraska than on a chicken farmer in Arkansas. Similarly, it will impact a dairy farmer in New York differently than the orange grower in California. We need a State-by-State and commodity-by-commodity analysis. One-size-fits-all will not work. A national average would not paint a true picture. When one is camping, they can’t put one foot in the cooler and one foot in the fire. It is about right. The same goes for loose assessments that are riddled with averages.

We have a responsibility to seek a full understanding of this legislation’s impact on our Nation’s ag and related ag industries. The information I requested is critical to help the Senate and America’s producers develop a clearer picture of cost increases for farmers, ranchers, and consumers.

We need the impact analysis to tell us which parts of the country will be hit the hardest and which industries within agriculture will incur the greatest losses as a result of this legislation. I have asked for this analysis prior to the vote. I believe it is necessary, and I hope we will have it before the hearing.

I am puzzled by the passage of nearly a full week since my request and no analysis has been provided. I trust the Administration has said it will remain engaged in the debate. I look forward to Wednesday’s hearing.

With that, Mr. President, I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tem. The Republican leader is recognized.

Mr. McCONNELL. Mr. President, I am going to proceed on my leader time.

The ACTING PRESIDENT pro tem. The Senator is recognized.

SOTOMAYOR NOMINATION

Mr. McCONNELL. Mr. President, I want to begin by thanking the Judiciary Committee staff, as well as Senators LEAHY and SESSIONS, for conducting a collegial, civil, and dignified hearing on the matter of the Supreme Court nomination. In my view, the hearing was in perfect keeping with the importance of the task before it.

Article II, section 2 of the Constitution says the President “shall nominate”—“by and with the Advice and Consent of the Senate”—“Judges of the supreme Court.” It is an obligation that all of us in the Senate take very seriously, even though Senators have not always agreed on the exact meaning of the phrase “by and with the Advice and Consent of the Senate.” In fact, it has been the subject of significant disagreement and struggle over the years.

I remember from my days as a young staffer on the Senate Judiciary Committee in the late 1960s and early 1970s, when the debate flared up over the nominations of Clement Haynsworth and Harrold Carswell after a full century in which appointments to the Supreme Court had more or less been a sleepy Presidential matter. It was during that time that I first grasped the danger of politicizing the process. By focusing on a nominee’s
ideology or political views above all else. I feared the Senate would end up distorting its traditional role of providing advice and consent and weaken the Presidential prerogative of making appointments to the Court.

I worried, in fact, about the potential dangers that I wrote a law review article on the topic, which I have repeatedly returned to over the years. Its purpose was to establish a meaningful standard for considering Supreme Court nominees that would bring some consistency to the process.

In the course of developing that standard, I went back and looked at the history of nominations, and I noticed something interesting: At a time a Senator had opposed nominees in the past, the reason for doing so was almost always based on the nominee’s “fitness”—even if it was perfectly clear to everyone else that the Senator's opposition was political or ideological differences.

What this polite fiction showed me, quite clearly, was that up until fairly recent history, ideology had never been viewed as an openly acceptable reason to oppose a nominee. And, in my view, this aversion to a political litmus test was a good convention and well worth following if we wanted to avoid gridlock every time the White House switched parties.

So I developed a list of fairly standard criteria that I had hoped would govern the process: A nominee must be competent; have obtained some level of distinction; have a judicial temperament; have an existing standard of ethical conduct; and have a clean record in his or her life off the bench.

In short, a President should be given great deference on his choice of a nominee, and these criteria certainly allowed that. As a Senator, I have consistently applied these criteria to Supreme Court nominees by Presidents of both parties.

In adhering to this standard, I was confronted not on my side. Despite a few notable exceptions, during the last century the Senate understood its advice and consent role to be limited to an examination of a nominee's qualifications, not his or her ideology. This attitude is consistent with the Framers' decision, after no little debate, to invest the President, not the Senate, with the power to nominate Justices. They did not want politics to interfere. And that is why it has always been my view that nominees for the Court be established on the basis of the nominees’s fitness alone.

Things changed for good during the last administration. It was then that the Democrats turned their backs on the old standard once and for all. Ideology as a test would no longer be the exception; the new order was firmly established at a Democratic retreat in April 2001 in which a group of liberal law professors laid out the strategy for blocking any high-level conservative judicial nominee. The strategy was reinforced during a series of hearings in which Senator Schumer declared that ideology alone—ideology alone—was sufficient reason to block judicial nominees.

These events marked the beginning of a seismic procedural and substantive shift on judicial nominees, and the results were just as I had anticipated as a young staff. Democrats would now block one highly qualified nominee after another to the appeals court for no other reason than the fact that they were suspected of being too conservative for their tastes.

Miguel Estrada was one of the first victims of the new standard. Because he had been nominated by a Republican leader at the time, we thought he was the kind of judge who could help advance the President's judicial philosophy. But that was not a valid reason for doing so.

During the Clinton years, I had no illusions about the ideological or political views of Stephen Breyer or Ruth Bader Ginsburg. Justice Ginsburg’s views on the Court’s role in the political process had been well known and clearly different than my own, such as her view that Mother’s Day should be abolished or that the Boy Scouts and Girl Scouts should be criticized for perpetrating false stereotypes about gender.

Most Americans, and certainly most Kentuckians, do not think those kinds of things. Yet despite that, I and the vast majority of my Republican colleagues voted for Justice Ginsburg. Why? Because the Constitution gave the President the power to nominate. And, in my view, they met the traditional standards of competence, distinction, temperament, and ethical conduct.

The vote in favor of Justice Ginsburg was 96 to 3. The vote in favor of Justice Breyer was 97 to 2. I voted for both, just as I had voted for every previous Republican nominee to the high Court since my election to the Senate—consistent with my criteria and based on their qualifications.

In voting for nominees such as Ginsburg and Breyer, it was my hope that broad deference to a President’s judicial nominees would once again become the standard. Even if the treatment of Republican nominees, such as Robert Bork and Clarence Thomas, suggested that many Democrats felt differently than I did, it was still possible at that time to imagine a day when the traditional standard would reemerge. As it turned out, that hopefulness was misplaced and short-lived.

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works, and the depth and breadth of one’s empathy”—what has come to be known as the “empathy standard.”

So over the course of the Bush administration the rules completely changed. Not only had it become common for senators to reject nominees on grounds of ideology, but now it was acceptable to reject someone based solely on the expectation that their feelings—their feelings—would not lead them to rule in favor of certain groups. Suddenly, judges were not even expected to rule in favor of certain groups. Suddenly, judges were not even expected to follow the fundamental principle of blind justice. Deference had eroded even more.

As I have stated repeatedly throughout this debate, empathy is a very good quality in itself. And I have no doubt that Senator Obama—now President Obama—had good intentions, and that his heart was in the right place when he made this argument. But when it comes to judging, empathy is only good if you are lucky enough to be the person chosen to be the judge in question and has empathy for. In those cases, it is the judge, not the law, who determines the outcome. And that is a dangerous road to go down if you believe, as I do, in a nation not of men but of laws—which, as you know, is Judge Sotomayor’s standard.

Moreover, the introduction of a new standard—the empathy standard—forces us to reevaluate again the degree of deference a President should be granted. Isn’t it incumbent upon even those of us who have always believed in deference to be even more cautious about approving nominees in this new environment ever since 2008?

Deference is still an important principle. But it was clearly eroded during the filibusters of appeals court nominees early in the Bush administration and it was eroded even further when Senators voted against John Roberts and tried to filibuster Samuel Alito. Moreover, the introduction of a new standard—the empathy standard—forces us to reevaluate again the degree of deference a President should be granted. Isn’t it incumbent upon even those of us who have always believed in deference to be even more cautious about approving nominees in this new environment ever since 2008?

If empathy is the new standard, then the burden is on any nominee who is chosen on that basis to show a firm commitment to equal justice under law. In the past, such a commitment would have been taken for granted. Americans have always had faith that our judges would apply the law fairly—or at least always knew they should. Unfortunately, the new empathy standard requires a measure of reassurance about this. If nominees aren’t even expected to uphold the equal justice standard, we can’t be expected simply to defer to the President, especially if that nominee, as a sitting judge, no less, has repeatedly doubted the ability to adhere to this core principle.

This doesn’t mean I would oppose a nominee just because he or she is nominated by a Democrat. It means that, at a minimum, nominees should be expected to have a commitment to equal justice. After all, judges in this country have taken since the earliest days of our Nation; namely, that they will “administer justice without respect to persons, and do equal right to the poor, to the rich, and to the middle stops,” judicially discharge and perform all the duties incumbent upon them under the Constitution and laws of the United States, so help [them] God.”

Looked at in this light, Judge Sotomayor’s record of written statements suggests an alarming lack of respect for the notion of equal justice and therefore, in my view, an insufficient willingness to abide by the judicial oath. This is particularly important when considering someone for the Supreme Court. If Judge Sotomayor were confirmed, there would be no higher court to deter or prevent her from injecting into the law the various disconcerting principles that recur throughout her public statements. For that reason, I will oppose her nomination.

Judge Sotomayor has made clear over the years that she subscribes to a number of strongly held and controversial beliefs that I think most Americans, and certainly most Kentuckians, would strongly disagree with, but that is not why I oppose her nomination; rather, it is her views on the essential question of the duty of a judge and the fact that there would be no check on those views were she to become a member of the Supreme Court.

In her writings and in her speeches, Judge Sotomayor has repeatedly stated that a judge’s personal experiences affect judicial outcomes. She has said her experiences will affect the facts she chooses to see as a judge. Let me say that again. She has said her experiences will affect the facts she chooses to see as a judge. She has argued that in deciding cases, judges should bring their sympathies and prejudices to bear. She makes herself an “aspiration—that in her view, cannot be met even in most cases. Taken together, these statements suggest not just a sense that impartiality is impossible but it is not even worth the effort.

But there is more. It appears these views have already found expression in Judge Sotomayor’s rulings from the bench. The clearest evidence of this is the decision of the Supreme Court itself. The Supreme Court doesn’t take easy cases. It only takes cases where there is no easy precedent, where the law is not crystal clear, cases where somebody’s policy preferences can more easily make their way into an outcome. Noting that fact, the Supreme Court has found that Judge Sotomayor misapplied the law in 9 of the 10 cases in which her rulings were brought before it. In this term, in fact, she is zero for three. Not only isn’t this a record to be proud of, together with her statements about impartiality, it is a record to be scared of if you happen to find yourselves standing in front of Justice Sotomayor.

Her most recent reversal by the Supreme Court is a perfect illustration of how her personal views can affect an outcome. I am referring to the Ricci case in which a majority of the Justices of the Supreme Court rejected Judge Sotomayor’s decision, and all of them, nine of them, agreed that her reading of the law was flawed.

This was a case in which a group of firefighters who had studied hard and passed a written test for promotion were denied it because not enough minority firefighters had scored as well as they had. In a one-paragraph opinion that a number of judges on her own court criticized as insubstantial and less than adequate given the seriousness of the circumstances, Judge Sotomayor flatly rejected an appeal by firefighters who had scored highly. This was a case in which Judge Sotomayor’s long history of advocacy for group preferences appeared to overtake an even-handed application of the law.

Judge Sotomayor didn’t empathize with the firefighters who had earned a promotion, as they suffered as a result. This is the real-world effect of the empathy standard. If the judge has empathy for you, great, but if she has it for the other guy, it is not so good. That is why you can call this new standard a lot of good things, but you certainly can’t call it justice.

Judge Sotomayor’s record on the Second Circuit is troubling enough, but, as I have noted, at least on the circuit court there is a backstop. Her cases can be reviewed by the Supreme Court. This meant that in the Ricci case, for example, the firefighters whose promotions were unfairly denied could appeal the decision. Fortunately for them, the Supreme Court sided with them over Judge Sotomayor. If, however, Judge Sotomayor would become a Supreme Court Justice, her rulings would be final. She would be unencumbered by the obligation of lower court judges to follow precedent. She could act more freely on the kinds of views that animated her troubling and legally incorrect ruling in the Ricci case. That is not a chance I am willing to take.

From the beginning of the confirmation process, I have said that Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law. Americans expect one thing when they walk into a courtroom, whether it is a traffic court or the Supreme Court, and that is equal treatment under the law.
Judge Sotomayor is a fine person with an impressive story and a distinguished background. But above all else, a judge must check his or her personal or political agenda at the courtroom door and do justice evenhandedly, as the judicial oath requires. The judicial oath requires that a judge first have in mind the most fundamental standard of all upon which judges in our country must be judged. Judge Sotomayor does not meet the test.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I congratulate the Republican leader on his statement. I think it was very thorough. I think it was very thoughtful, and I am sure it took a lot of hours of deliberation and observation not only of Judge Sotomayor’s record but also of her testimony before the Judiciary Committee. So I congratulate the Republican leader on a very thorough statement and one that I think makes very clear the reason he reached the difficult decision to oppose the nomination of Judge Sotomayor for the U.S. Supreme Court.

I wish to say that we are supposed to be on the Department of Defense authorization bill. Obviously, we are not. We are on the hate crimes bill, which the majority leader decided was important enough to replace the proceedings of the Senate on the Defense authorization bill and the very urgent mission we have and obligation and duties we have as a Congress to authorize the means necessary to defend the security of this Nation and the men and women who are defending it. So we will be wrapped around the axle on amendments and which ones are allowed and time agreements. I am not saying this legislation would have moved forward smoothly; there are always some difficulties. But for many years now, I have been involved in the authorization bill, and this is the first time I have ever seen the majority leader of the Senate come forward and propose a comprehensive piece of legislation which had not gone through the committee of authorization, and, of course, this side of the aisle then had to, as is our right, propose an amendment of our own. Of course, there is some reluctance on this side of the aisle to agree to a time agreement, and so we go back and forth. The women of the military are in two wars and they don’t quite understand why we don’t just move forward and do what our oath of office requires us to do, and that is to support and defend the Constitution of the United States. So I will continue to work with the distinguished chairman, and I am hoping we will be able to work together to get the legislation moving again.

I understand there are four amendments to be considered on the hate crimes bill. There was a gun amendment that has been introduced and there may be amendments on that, and time agreements. Meanwhile, the issue of the F-22 and whether we continue production of it is set aside while we debate non-germane amendments to the Defense authorization bill.

So I guess what is probably going to happen, from previous experience—and I don’t know about that on this side of the aisle, and file cloture. Then we will have a vote on cloture. I don’t know how that vote turns out; it depends on whether Members on both sides of the aisle feel their amendments or their views have been adequately addressed.

But I am convinced that we would have moved forward with the authorization bill, that we probably could have addressed the issue of the F-22—and I do not say this side of the aisle is blameless, but I do understand why, when we knew hate crimes was going to be brought up, that those who feel strongly on this side of the aisle—including the fact that it never went through the Judiciary Committee; it has never been reported out but is added on a defense authorization bill—and that is quite unfortunate. It is unfortunate, and it is not really a good statement about the way we represent the American people, because if there is any legislation we should be moving forward on—and I will take responsibility on this side of the aisle too—that certainly is the Defense authorization bill.

I believe there is an unbroken record of approval of the Defense authorization bill over a many-year period of time. I hope that, on behalf of the greater good, we can sit down and work out amendments and work through the hate crimes and the amendment by the Senator from South Dakota, and we can move forward and get this issue resolved. I don’t think it is the right way to do business, particularly when we are talking about the defense of the Nation.

So I pledge to my colleagues from Michigan, the distinguished chairman whom I have had the great honor of working with for many years, to try to work through this. But I still maintain that the fact that the majority leader of the Senate felt it necessary to bring a hate crimes bill up before the Senate is an unnecessary action, which is clearly not germane, triggered this situation which we are in today.

Having said that, it is what it is, and so I will go in the back now and see where we can work out amendments, see if we can work out an agreement to have the hate crimes vote, to have the gun vote, and then hopefully work with the target of tomorrow morning for voting on the F-22 since, as we have discussed in the past on the floor of the Senate, the importance of that vote is far more important than any single weapons system. It is really all about whether we are going to have business as usual and spend taxpayers’ money on what the President of the United States, the Secretary of Defense, the Chairman of the Joint Chiefs of staff, and our other military leaders think should be spent on the Joint Strike Fighter rather than further production of the F-22. From what I understand, it may be a most controversial amendment. I wish we were spending more time debating than hate crimes and gun amendments.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, first of all, we are operating under a unanimous consent agreement. We have an agreement to vote on the F-22 amendment after 2 hours of debate. We are attempting to schedule that now. People are getting the cooperation of Members for tomorrow morning. That is our goal.

The pending amendments to the hate crimes provision are going to be disposed of this afternoon pursuant to that same unanimous consent agreement. There may be a difference as to how we got to where we are. There is a difference; it was the inability to get an agreement to get a time agreement, which triggered the determination of the majority leader to offer an amendment that Senator KENNEDY had offered about 2 years ago on a Defense authorization bill. It passed the Senate and the President signed it.

It is not the first time hate crimes was taken up by the Senate. It is not the first time the hate crimes amendment was offered on the Defense authorization bill. It was offered 2 years ago, and it passed on a 60-to-39 vote. I believe. It was Senator KENNEDY’s amendment. Of course, Senator KENNEDY is not available now to offer his own amendment. The majority leader offered it because of Senator KENNEDY’s necessary absence.

So now we are operating under a unanimous consent agreement. The pending amendment is Senator THUNE’s. It is not germane, but, again, it is not unusual that nongermane amendments are offered in the Senate. We try to keep them to a minimum—those who manage bills—in order to get through the bill.

We are hoping that once the F-22 amendment and the amendment of Senator THUNE are disposed of, we will then be able to get back to germane and relevant amendments. That is our hope. In order for that to happen, we need Members of the Senate to bring those amendments to the floor and tell us they agree with Senator McCAIN and I will be able to offer them as a package.

Senator MCCAIN was extremely helpful in getting us to the point where we
could enter the unanimous consent agreement. A vote is scheduled today on our hate crimes-related amendment. We have a time agreement on the F-22 amendment, and a time for voting on that amendment is being discussed. It is my goal that we vote on that amendment tomorrow morning after we debate it.

Please, colleagues, bring your amendments to the floor. We are here. We are ready to be notified of those amendments on which Members of the Senate believe we will need a rollcall vote. We will try to clear as many amendments as we can. We urge our colleagues to notify us now of the amendments they intend to offer.

Mr. President, I ask unanimous consent that amendment No. 1614 be identified as a Kennedy amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. Levin. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. Brown. Mr. President, I ask unanimous consent to speak as in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MOON LANDING ANNIVERSARY

Mr. Brown. Mr. President, I rise to celebrate the historic event that took place on this date 40 years ago. On this day in 1969, Ohio native Neil Armstrong became the first human to step foot on the Moon.

I am old enough to remember that day, it was a day when the stuff of dreams became reality. While that magical moment is still a source of inspiration for young people today, the times in which the landing took place are often forgotten. The United States and the Soviet Union were in the middle of the space race, but the Moon landing was about so much more than who could get there first.

It was the height of a major progressive era in our country’s history, which saw the establishment of Medicare and Medicaid; saw the Civil Rights and Voting Rights Act signed into law; the creation of Head Start; a time which saw the beginning of the environmental movement in our time, all within about a 5-year period, during that progressive era.

It was also a time of turmoil for America. We were a nation at war. We bore witness to the assassinations, only a year before, of Dr. Martin Luther King and Robert Kennedy.

When America needed heroes—and it did that summer in 1969—it found them in the crew of the Apollo 11 spacecraft. Despite uncertain times our Nation faced, we refused to succumb. We moved forward in the most American way—working to achieve what others said could not be done.

I was 16 years old when Neil Armstrong landed on the Moon. It was more than his crew mates, Michael Collins and Buzz Aldrin. It was more than the hundreds of men and women at mission control. From what is now NASA Glenn Research Center in Cleveland to the hundreds of thousands of scientists and researchers around the Nation, the Moon landing was about the American spirit and know-how. The Apollo 11 landing was a national collaborative success. As we look back on the past 40 years, we have seen a different country in a different time, with many of the same challenges. As our Nation struggles to pull itself out of the current economic downturn, we have debated what role the government should play in space exploration. While we debate the future of NASA, we must also remember the billions of dollars of economic benefit NASA has brought, and is still bringing, our Nation.

The myth that the Federal Government is incapable of doing great things is shattered when one thinks of achievements such as the Moon landing—not to mention Medicare, Social Security, and all we talked about in that progressive era.

From the six Apollo landings, to Skylab, to cooperative ventures with the Soviet Union to the shuttle program, to the Hubble telescope, to the space shuttle, and beyond, NASA has touched and improved nearly every aspect of our American way of life.

Those who believe government should sit on the sidelines and merely be an observer in our Nation’s future need not look back 40 years but can look at everything NASA has done and what it continues to do today.

Today, NASA, in many ways, is more important than ever. As we work toward a carbon-free economy, we forget that NASA was building the first large-scale windmills in the 1970s. Much of the early work on wind turbine technology development was done at Plum Brook in northern Ohio near Sandusky, part of NASA Glenn.

In a modern version of the space race, the United States is in a sprint to lead the world in clean energy. NASA’s alternative fuel research laboratory, and its solar-powered aircraft, Helios and Pathfinder Plus and its space solar program are just three of the many NASA clean energy programs.

We can create a carbon-free world, and NASA can lead the way, just like it did in aeronautics and space flight.

Beyond the moon, we must never forget the men and women of NASA and their work that enabled the United States to put Apollo 11 on the Moon.

I am proud to cosponsor S. 951, which would authorize the President to award Congressional Gold Medals to Neil A. Armstrong, the first human to walk on the Moon; Edwin E. “Buzz” Aldrin, Jr., the pilot of the lunar module and second person to walk on the Moon; Michael Collins, the pilot of their Apollo 13 mission’s command module; and the first American to orbit the Earth, John Herschel Glenn.

The bill’s sponsor is Senator Nelson of Florida, an American hero in his own right, who has a long history of service to our Nation and NASA.

Today is a celebration of our Nation’s Apollo mission, and a celebration of our country. It is also a celebration of humankind’s ability to do great things. Today is a celebration of reaching for the stars in every way.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. Sessions. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. Sessions. Mr. President, I am very concerned about legislation that has been added to the Defense bill, the
so-called Hate Crimes Act. Certainly, none of us has any sympathy whatsoever for people who commit crimes of any kind, particularly those who would attack somebody because of their race, ethnicity, sexual orientation, or any other reason. I wish to take a few moments to explain why this legislation is not good and why this legislation is not good and ought not to be passed. Some of my remarks may appear to be technical, but they are very important, in my view, as a former Federal prosecutor for a full 15 years.

I don’t think it was ever appropriate that we bring this legislation to the floor and stick it on this Defense bill without having a markup in the committee without the ability to discuss it and improve it.

For years legal commentators and jurists have expressed concern at the tendency of Congress, for the political cause of the moment, to persist in adding more and more offenses to the U.S. Criminal Code that were never Federal U.S. crimes before. This is being done at the same time that crime rates over the past decade or so have dropped and State and local police forces have dramatically improved their skills and techniques. They are accomplishing in the police forces all over the country today. An extraordinary number of police officers have college degrees and many advanced degrees.

I think two questions should be asked initially. First, is this a crime that uniquely affects a Federal interest, and can it be addressed by an effective and enforceable statute? Second, have local police and sheriffs’ offices failed to protect and prosecute this vital interest?

Most people do not understand that a majority of crimes—theft, rape, robbery, and assault—are not Federal crimes and are not subject to investigation by the FBI or any other Federal Agency. They could not do so if they wanted to because they have no jurisdiction. They can only investigate Federal crimes. It has been this way since the founding of our country, and it fixes responsibility for law enforcement on local authorities where it should be.

Americans have always feared a massiv
e Federal Government police force. It is something that we have not ever favored. This is not paranoia but a wise approach, and I do not think it should be changed. Instead of administering justice without fear or favor, this legislation that has been placed on this bill creates a new system of justice for individuals because of their sexual orientation or gender identity, providing them with a special protection, while excluding vulnerable individuals, such as the elderly or police officers or soldiers, from such special protections. I don’t think we can justify that.

The question is why the DOJ reauthorization bill is to make sure the men and women who protect our freedoms have the necessary resources to continue to do the fabulous job they have been doing. We should not deviate from this path by addressing matters wholly unrelated to the defense of our Nation. A bill of such breadth and lack of clarity as this should be carefully reviewed with the utmost care. I am aware of the problems that plague this committee. Yet this legislation had no markup in any committee. In fact, no version of the bill has been marked up since 2001, and this version is quite different and more expansive than the 2001 bill.

The committee held a quickly thrown-together hearing on June 25 in which Attorney General Holder himself appeared. The Attorney General, however, failed to point to any single serious incident in the past 5 years, when I asked him that question, where the types of crimes that are referred to in the bill, to give special Federal protection to select individuals, were not being prosecuted by State and local governments.

Additionally, the Attorney General refused to say attacks on U.S. soldiers predicated on their membership in the military, for example, a Muslim fundamentalist, could be considered a hate crime.

It is baffling to me, given previous opposition and serious concerns which have been raised about this legislation, that the act, instead of being constricted, is actually expanded in a vague and awkward way. It focuses on the perception of what someone might have been thinking when they committed the crime and includes categories which are undefined and exceedingly broad, such as gender-related characteristics and gender identity. From questions that have been raised, these categories do not have clear meaning. During the course of debate on hate crimes legislation—a debate that started in 2001—amendments have been offered to also protect our military members. If it is unassailable that they have been targeted. Those amendments were rejected.

Mr. President, I will briefly outline my opposition to the legislation in the following ways.

The hate crimes amendment is unwarranted, possibly unconstitutional. Certainly, I believe it is unconstitutional in certain parts—and it violates the basic principle of equal justice under the law. The hate crimes amendment has been sent to the jurisdiction, and you cannot be discriminated against by your race or background.

Unfortunately, I have to say there were areas of the country—particularly in my area of the South—where that was not so. People were being unfairly treated. In fact, in some other areas of the country also. I believe great care was taken with that act because, as I said, there was strong evidence to suggest that a Federal expansion of criminal law would be appropriate to deal with it.

So the history of civil rights violations caused and fully justified Congress’s passage of this statute. There was direct evidence, for example, that African Americans were being denied the right to vote or intimidated at voting precincts without State and local law enforcement protecting them. There was much evidence, sadly, that other rights of African Americans were not being protected.

But that is not the case with this amendment, and I will talk about that in a minute. Gays and lesbians have not been denied basic access to things such as health or schooling or to the ballot box. They openly are able to advocate their positions today, which I think is certainly healthy, and have no difficulty in approaching government officials at whatever level.

When Eric Holder testified a few weeks ago before the Judiciary Committee, I asked him to think for direct evidence that hate crimes against individuals over the past 5 years, because of their sexual orientation or
otherwise, were not being prosecuted by local authorities. Instead of answer- ing the question, he referred me to four cases in his written testimony which he had delivered to the committee. Let me make the number clear as strong evidence that these cases are being prosecuted.

The Attorney General could not come up with 4,000 cases or 400 or 40 cases. He only named four cases in 5 years. So we took a look at those four cases he brought up in his testimony, and this is what we found.

In one case, Joseph and Georgia Silva assaulted an Indian-American couple on the beach. Although there was evidence that racial and ethnic slurs were used during the altercation, a California El Dorado County judge ruled that prosecutors failed to produce sufficient evidence that the alleged assault was motivated by racial prejudice. The prosecutor had pursued a hate crimes conviction, including charging felony assault, which is punishable by up to 3 years in prison. The evidence, according to the judge, was that racial slurs were used in the heat of anger. There was no evidence the attack was initiated because of ethnicity.

Both Joseph and Georgia Silva were convicted of assault, the basic crime that they committed, and Joseph Silva was sentenced to 6 months in prison and 3 months probation, while Georgia Silva was sentenced to 1 year in prison. The evidence showed they had begun fighting and that is when he pulled the gun and shot him. He said the individual would not get out of the car.

The Department believes that our partners and local law enforcement share our commitment to effective hate crimes enforcement. The Department does not have access to precise statistics of hate crimes that have gone unprosecuted at the State and local level, and we are unaware of any source for such comprehensive information of unprosecuted offenses generally. Federal jurisdiction over the violent bias-motivated offenses covered under S. 909 is needed as a backstop for State and local law enforcement to ensure that justice is done in every case.

So he is suggesting that, in a select group of cases that are on the front burner today, the Federal Government needs this legislation—S. 909, which has now been attached to the Defense bill—as a backstop for State and local law enforcement to ensure that justice is done in every case.

Well, there are many prosecutorial and jury decisions that are made in State courts every day with which one could disagree. The question is whether the Federal Government will be empowered to ensure justice is done in every case.

I just want to share the reality of the world with my friends here, that any one, I guess, can conclude that a case didn’t end justly for them. One distinguished jurist is famously quoted as saying, ‘To speak of the equivalent of pounding the table. It just adds an element of emotion to the discussion.’ But whatever we mean by that word, it basically means the Attorney General gets to decide whatever he wants to do. I am not sure this is good legislation. I think legislation ought to be crisp and clear and set forth criteria by which a prosecution occurs or does not occur, leaving not so much broad discretion among the prosecutorial authorities.

I submitted, after Senator Coburn—or at the same time, really—a similar question because I believed he had not been responsive to my question, and I asked this about our colleague, referring to Senator Hatch, who was a former chairman of the Judiciary Committee and who has worked on this issue for a number of years—and my question is this:

Senator Hatch in the past has offered a complete substitute to similar legislation, which would require that a study be conducted to prove that there is an actual problem with hate crimes not being prosecuted. Do not give me a general response that there are some problems out there. I would like you to provide the Committee with an exact and precise number of hate crimes the Justice Department is aware of which have gone unprosecuted at the State and local level. Please detail every example you or anyone in the Department of Justice is aware of where no prosecutorial effort took place.

This was the answer we got:

The Department is unable to provide an exact number of cases in which State, local or tribal jurisdictions have failed to prosecute hate crimes not aware of any such compilation of data.

Senator Hatch has been offering this amendment for a study for a decade.
Let me just say, if this legislation is passed it will have one dramatic, undiscussed impact. Federal law enforcement agents—and there are not many. You may have a city with 300 police officers in it and 10 FBI agents, another hundred sheriffs’ deputies, another State and local law enforcement. Now huge numbers of crimes will be coming across the desk of the FBI, which has terrorism, white-collar crime, bank fraud which they need to be working on today’s crimes and drug smuggling. Now they are going to have to review hundreds of complaints about cases they had not heretofore had jurisdiction of and did not have to review. I just raise that point as an aside.

Based on the Attorney General’s response, I conclude that the bottom line is there is nowhere near the real evidence needed to justify this legislation. No one in this body has produced the evidence, and the Attorney General of the United States, who is promoting the bill, produced any. The Attorney General’s reality is that the Attorney General Holder’s response, instead of demonstrating the need for hate crimes legislation as written, provides verification that it is not necessary, and it raises a question of whether this is driven more by the personal interests of the Attorney General at a particular time. It is easy to complain that anybody who opposes a hate crimes bill favors hate. That is not a fair charge. I think most of our colleagues fully understand that. But politically that is understandable in the current atmosphere, and it raises a question of whether this is driven by political interests at this time.

Furthermore, in a rushed attempt to cover a lot of ground, the Attorney General Holder’s response, instead of demonstrating the need for hate crimes legislation as written, provides verification that it is not necessary, and it raises a question of whether this is driven more by the personal interests of the Attorney General at a particular time. It is easy to complain that anybody who opposes a hate crimes bill favors hate. That is not a fair charge. I think most of our colleagues fully understand that. But politically that is understandable in the current atmosphere, and it raises a question of whether this is driven by political interests at this time.

As a matter of fact, one of the studies heavily relied on by the Attorney General in support of this bill is a 2006 report published by the National Coalition of Anti-Violence Programs, which is composed primarily of lesbian, gay, bisexual, and transgender groups. They have every right to do those studies and present them, but it is a coalition clearly acting in its self-interest in the legislation, and it should be examined carefully. The Attorney General had to rely on these types of reports because crime statistics do not support the notion that the incidence of hate crimes has increased. Even though we are doing a better job of reporting those things today, still over the past 10 years the number is down, down slightly, even though population is up in our country.

But let’s look at the views of the members of the Senate Judiciary Committee, and the Civil Rights, our own U.S. Civil Rights Commission, who have examined this legislation carefully. Six of its eight members signed a strong letter to the President and to the Judiciary Committee to oppose hate crimes. Did I mean to say the Civil Rights Commission wrote in favor it? No. But to oppose it. Their letter, dated June 16—just last month—addressed to the Members of the Senate and the President said this:

We believe that the MSHCPA [Matthew Shepard Hate Crimes Prevention Act] will do little good and a great deal of harm. Its most important effect will be to allow Federal authorities to prosecute a broad category of defendants who have already been acquitted by State juries, as in the Rodney King and Crown Heights cases more than a decade ago. Due to the provisions for prosecution of “dual sovereigns,” [that is the two sovereign entities] such double prosecutions technically are not violations of the double jeopardy clause. But they are very much a violation of the spirit that drove the Framers of the Bill of Rights, who never dreamed that Federal criminal jurisdiction would be expanded to the point where an astonishing portion of crimes are now both State and Federal offenses. We regard the broad federalization of crime as a menace to the Constitution and the rights of the civil citizen. There is no better place to draw the line on that process than with a bill that purports to protect civil rights.

They go on to say:

While the title of MSHCPA suggests that it will apply only to “hate crimes,” the actual criminal prohibitions contained in it do not require that the defendant be inspired by hatred or ill will in order to convict. It is sufficient if he acts “because of” someone’s actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. I am quoting from the Civil Rights Commission letter.

Racists are seldom indifferent to the gender of their victims. They are virtually always chosen “because of” their gender. A robber might well steal only from women or children. A sexual predator might well steal from children or from the disabled because, in general, they are less able to defend themselves. Literally thousands of these incidents of violence today, still over the past 10 years the number is down, down slightly, even though population is up in our country.

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As a matter of fact, it appears the Attorney General didn’t think the issue important enough to answer him himself. He let his staff people answer, when he was the one who appeared before the committee and we were following up on his personal testimony.

A number of arguments and statements have been made, including those by the Attorney General, that there are quite a few of these incidents, tens of thousands of these incidents over the last number of years. But overwhelmingly these despicable incidents are of vandalism, many by juveniles. Let me make clear that even those incidents are significant and deserve prosecution and investigation and, where appropriate, stiff punishment. But let’s look at the views of the members of the Senate Judiciary Committee, and the Civil Rights, our own U.S. Civil Rights Commission, who have examined this legislation carefully. Six of its eight members signed a strong letter to the President and to the Judiciary Committee to oppose hate crimes. Did I mean to say the Civil Rights Commission wrote in favor it? No. But to oppose it. Their letter, dated June 16—just last month—addressed to the Members of the Senate and the President said this:

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The letter goes on to state their belief that any of these were not vigorously prosecuted. That is a serious charge made by a member of the Civil Rights Commission about the purpose of the Department of Justice in supporting this act.

I think that is a serious charge made by a member of the Civil Rights Commission about the purpose of the Department of Justice in supporting this act.

I would note, it is an inevitable delight of prosecutors to have more and more power and more and more ability to prosecute criminals. That is what they do. They are wonderful people. I never enjoyed anything more than being a prosecutor, wearing a white hat every day to work and trying to vindicate decent people from criminal acts. But that is just a tendency of the prosecutorial mindset that we ought not to forget.

The truth is, during the recent hate crime hearing, no one complained in favor of the bill could point to a single incident where I think, a valid hate crime was not pursued or prosecuted by State and local law enforcement officials.

In the latest statistics that are available, of the 2006 hate crimes reported in 2007, only nine were classified as murder or nonnegligent manslaughter. That is certainly nine too many. I think every one should be prosecuted. But no complaints have been raised that any of these were not vigorously or fairly prosecuted. Indeed, two-thirds of the offenses involved property desecration, such as graffiti and name-calling. Missing from the analysis is any evidence that the crimes are not being prosecuted at the State and local level. Indeed, 45 of the 50 States and the District of Columbia already have and enforce hate crime laws. Although the language is broad and some could criticize it, these States have passed these bills, and they are able to enforce them.

Statistics show that these hate crimes, even with better reporting, have decreased slightly over the years. Forty-four States have stiffer penalties for violence related to race, religion, or ethnicity, and 31 States have tougher penalties on violence related to sexual orientation.

The question arises, do we have a basis for this massive and historic change in Federal enforcement of what have been State crimes?

Perhaps Mr. Andrew Sullivan—an openly gay man who has pioneered the effort to have gays in the military and is a well known and an able writer, provides the answer. Mr. SULLIVAN had this to say about the legislation:

The real reason for hate crime laws is not the defense of human beings from crimes. There are already laws against that—and Matthew Shepard’s murderers were successfully prosecuted to the full extent of the law in a State that had no hate crime law at the time.
The real reason for the invention of hate crimes was a hard left critique of conventional liberal justice and the emergence of special interest groups which need boutique legislation to raise funds for their office staffs and luxurious buildings. Just imagine how many direct mail pieces have gone out explaining that without more money, more gay human beings will be crucified on fences. It is very, very powerful as a money-making tool, which may explain why the largely symbolic bill still has not passed. If it passes, however, I’ll keep a close eye on whether it is ever used.

This is a gay man expressing his opinion. No doubt he takes these issues very seriously, and symbolism is important in the political world. We need to be careful that statutes that become a permanent part of our criminal code are supported by evidence and principle.

I do not think our focus here is to deal with symbolic legislation that is broad and can expand Federal criminal jurisdiction beyond its historic role and where the facts do not support the need. In other words, more narrowly tailored, consistent with a constitutional right could very well be something this Congress would want to pass. To pass legislation so extremely broad again could give Federal jurisdiction for the first time in history to every rape that occurs in America. It ought to be looked at with great care and ought not to be stuck onto a defense bill and moved forward, in my opinion.

The Constitution endows Congress with limited and enumerated powers. There is no general police power in the Federal Government. So at this point, I wish to raise issues with the constitutionality of the hate crimes provision.

Congress’s power is limited to what it can regulate under the Commerce Clause. The proposed legislation is based upon the idea that a discrete crime in a local community may have an impact on interstate commerce. That theory was rejected in both U.S. vs. Lopez and U.S. vs. Morrison, where the Supreme Court essentially noted that the Federal interstate violent conduct does not impact commerce normally.

Nat Hentoff, a well-respected noted civil rights and civil libertarian attorney and writer recently wrote about some constitutional concerns he has with the legislation. This is what he said:

In the definitive constitutional analysis of James B. Jacobs and researcher Kimberly Potter, it is documented in “Hate Crimes: Criminality and Policy” that in “Grimm v. Churchill the arresting officer was permitted to testify that the defendant had a history of making racial remarks. Similarly, in People v. Lampkin, the prosecution presented as evidence racist statements the defendant had uttered six years before the crime for which he was on trial, as specifically relating to the offense. As for the 13th Amendment’s essential requirement that no person be denied “the equal protection of the laws,” there is carved above the entrance to the Supreme Court the words “Equal Justice Under Law.”

This legislation, certain to be passed by the Senate, it seems will come to the Supreme Court.

And I am quoting Mr. Nat Hentoff, the well-known and respected civil lib-
that if my colleagues would study the legislation and think about what they are doing, they would see that this is more unwise and the objections they have heard have far more weight than they had thought initially.

It would be a bad idea. Who would want to be against a crime that says it wants to punish hate? But there are serious matters and constitutional issues, as I noted from the Civil Rights Commission, from the civil rights attorney, Mr. Nat Hentoff. I think, in truth, the Attorney General should have been more balanced in his testimony before the Judiciary Committee. He came pushing this legislation with a lot of listening or expressing any concern. But I do think he should have pointed out that it represents one of the largest expansions of Federal law enforcement in history. He should be the first to point out and express that concern. He should not allow politics to enter into it.

Mr. WARNER. I ask unanimous consent that the Senator from Virginia be recognized next as in morning business for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER (Mr. Warner). Without objection, it is so ordered.

SIX MONTHS IN OFFICE

Mr. KYL. Mr. President, today marks President Obama’s sixth month in office. The President began his term with an enormous amount of goodwill, high approval ratings and pledges to work in a bipartisan way. In the earliest days he reached out in a bipartisan way to secure administration priorities and Republicans reciprocated. For example, I joined the President in supporting the release of the second tranche of financial stabilization money. But the administration has been increasingly partisan in the months since then. The effectiveness of the President’s policies is increasingly questioned by the American people as spending and deficits have skyrocketed. Unemployment has gotten much worse since the same month America’s interests abroad have been challenged with little response.

Let me first speak to the issue of domestic policy, spending and debt. On domestic policy, President Obama’s first 6 months in office have been characterized by unprecedented spending and debt accumulation. In 6 months, President Obama has put the country on a course to spend more and accrue more debt than any President in history; in fact, to take on more debt than all of the other Presidents in the history of the United States combined. The President has at the same time exercised the power of government in unprecedented ways. The President knows this is greatly concerning to the American people. So on June 16, President Obama told an interviewer: I actually would like to see a relatively light touch when it comes to government.

But when it comes to the size and scope of the government, nothing President Obama has done in his first 6 months resembles a light touch. Time after time, he has pushed government intervention and takeovers and huge spending increases as the preferred solutions to various problems, whether it is to stimulate the economy, reform health care, or bail out bankrupt car companies.

The President cites the economic downturn as a reason to clear the way for more and more new spending, but we still don’t have any evidence that this record-breaking spending has actually helped the economy. Take the $1.2 trillion so-called stimulus bill. In pitching the stimulus to the Nation, the President pledged that “a new wave of innovation, activity, and confidence would be across America.” The administration also said it would help keep unemployment from topping off administration priorities and Republicans reciprocated. For example, I joined the President in supporting the release of the second tranche of financial stabilization money. But the administration has been increasingly partisan in the months since then. The effectiveness of the President’s policies is increasingly questioned by the American people as spending and deficits have skyrocketed. Unemployment has gotten much worse since the same month America’s interests abroad have been challenged with little response.

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create 3.5 million new jobs.” He insisted Congress rush the bill through despite concerns about the cost and the Government’s ability to disburse funds in a timely way.

As we now know, since President Obama signed legislation far more massive than the $787 billion stimulus, more than $800 billion has now been distributed. The Wall Street Journal notes: “President Obama signed $3.4 trillion 10-year budget also created by the budgets of each of the previous 43 Presidents, all the way back to President Washington. By the end of this fiscal year, our publicly held debt will amount to roughly 57 percent of the gross domestic product and deficits of $1 trillion are predicted for the next decade. This will drive the debt to 82 percent of the gross domestic product by the year 2019. Interest payments on this debt will soon make up the single largest item in the debt. In fact, as for the interest cost, beginning in 2012 and every year thereafter, the government will spend more than $1 billion a day on finance charges to holders of U.S. debt. That means Federal spending on finance charges for the government will be a whopping $5.700 per household in 2019.”

Americans are weary of this kind of debt, to say the least, and many don’t think it is fair for Washington to overspend and then simply pass the bill on to our children and their children. These levels of spending and debt would be reckless in the best of economic times, and they are not consistent with President Obama’s pledge for a new era of fiscal responsibility.

Let’s turn to the government.

The American people—and those of us in Congress—want health care reform. That is not in question. But President Obama is proposing a trillion-dollar health care program that would, according to the Congressional Budget Office, cause millions of Americans to lose their current care by providing an incentive to employers to drop their health care coverage.

How is this consistent with the President’s assumption, or is it? If Americans like their current insurance, can they keep it? Remember, 85 percent of Americans have insurance and the vast majority of them like their coverage and they do not want to lose it. President Obama frames this huge new entitlement as a cost-saving, deficit-reducing measure. At a July 1 townhall meeting in Virginia, the President told participants:

“If we want to control our deficits, the only way we’ll be able to do it is to control healthcare costs.

But does anyone believe that creating a new trillion-dollar, Washington-run health care bureaucracy will reduce costs? When in history has a new government program ever reduced costs? Obama, the current government-run health care programs—Medicare and Medicaid—are both on financially unsustainable paths. Medicare alone has a $38 trillion unfunded liability over the next 75 years and is in urgent need of reform.

Some of the projected revenue for the President’s plan comes from cuts in Medicare. How is it fair to cut seniors’ care to pay for a new government-dominated system for nonseniors, especially since Medicare is already in financial trouble? This would ultimately lead to shortages, rationing, and the elimination of private plan choices—something our seniors rightly fear. It does not make much sense to strip funds from those already participating in government health care and to then use the savings for the creation of a massive new government health care system that few people want. Americans rightly worry the President’s proposals will lead to the kind of denial and delay that happens in Canada and Great Britain.

The President has even said:

“What I think the government can do is be an honest broker in assessing and evaluating treatments.

That can only mean one thing: denial and delay of care. In that kind of system, no doctor or hospital will educate what is best for you and me, if our health care is worth the money, and drive a wedge between doctors and patients.

President Obama said recently:

“When you hear the naysayers claim that I am trying to bring about government-run healthcare . . . know this, they are not telling the truth.

Well, maybe the President does not like the term ‘government-run healthcare’ because it is not popular with Americans. But a plan administered by the government, with prices and policies and treatments evaluated and dictated by Washington bureaucrats, is government-run health care, plain and simple.

On another issue, cap and trade: One of the President’s oft-repeated campaign pledges was he would not raise taxes on middle-income Americans. But the cap-and-trade legislation he and congressional Democrats are backing would do just that.

On June 26, the House of Representatives passed cap-and-trade legislation, championed by House Majority Leader Steny Hoyer and congressional Democrats, is government-run health care, plain and simple.

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The energy bill would not directly raise taxes on Americans; that is, they will not necessarily see a larger income tax bill. But the new proposals that the administration, the Department of Energy, and the nonpartisan Congressional Budget Office analyzed the cost of a reduction of carbon emissions by 15 percent below 2005 levels, it estimated a
family’s cost of living would increase by $1,600.

To put that $1,600 carbon tax in perspective—

Martin Feldstein wrote—a typical family of four with earnings of $50,000 now pays an income tax of about $3,000. The tax imposed by the cap-and-trade system is, therefore, equivalent to raising the family’s income tax by about 50 percent.

That is $1,600 that families will not be able to save for the future.

In addition to the tax increase, cap and trade would retard economic growth. The Heritage Foundation analyzed the proposal and concluded it would slow long-term growth by almost $10 trillion over the next 26 years. Jobs would be lost. The Heritage Foundation’s analysis, in fact, found that my State of Arizona would lose thousands of jobs.

Proponents of the cap-and-trade proposal argue that job losses will be offset by the creation of new green jobs. But it is not at all certain those jobs will materialize, let alone make up for the jobs that are lost. In Spain, where government has invested heavily in green jobs, two jobs are lost for every green job created, according to Spanish economist Gabriel Calzada.

Especially at a time when the economy is shaky and unemployment has reached a 25-year high, I am disappointed the President is promoting this legislation that not only would violate his campaign promise but would cost taxpayers billions of dollars and harm jobs.

Let me now address some issues that are not directly domestic: free trade issues and problems with Iran and North Korea.

First, on free trade: I am very disappointed that the administration has not made free trade a top priority. It has failed in its first 6 months to take any action on bilateral trade pacts with Colombia, Panama, and South Korea—all of which were signed under President Bush. These trade deals would provide a boost to the U.S. economy and would also strengthen U.S. partnerships in two important regions. Not only has the administration failed to move swiftly on these trade agreements, it has also supported a number of damaging protectionist measures, such as a “Buy American” provision in the stimulus package.

These policies have angered U.S. tradepartners and hurt America’s credibility as a promoter of free trade liberalization. They have also triggered retaliation. For example, after the administration canceled a trucking program with Mexico—a program opposed by the Teamsters Union—the Mexican government responded by slapping tariffs on a range of American imports, including wheat, beans, beef, and rice. A global recession is no time in which to start a trade fight.

With Iran: There are few regions of the world as volatile as the Middle East. Yet the administration’s approach to Iran has been regrettable, to say the least.

When pro-democracy demonstrations were being suppressed in Tehran, the President offered barely a word of support for the people putting their lives on the line for their freedom. Iranian demonstrators were met with violence and even thrown out to the streets to peacefully protest the validity of Iran’s Presidential election in June to declare their support for free elections and oppose Iran’s oppressive police state.

The President likes to say: Words matter. Very true. But his initial statements and subsequent concerns about the election failed to condemn the Iranian theocracy and lacked moral fortitude. And even as pressure rose on the President to take a stronger stand, he declined to provide the leadership the world expects from America, the standard bearer for freedom and democracy.

As the Weekly Standard recently editorialized:

Since June 12, [President Obama has] done nothing to dissent from the internationalist crowd been seeking, in the words of Thomas Jefferson, “... to assume the blessings and security of self-government.”

“Explaining his reticence, the President said: It’s not productive, given the history of U.S.-Iranian relations to be seen as meddling—the U.S. president meddling in Iranian elections.

The United States should be lending full-throated support to the democratic aspirations of the Iranian people, while seeking to impose sanctions on their oppressors. It is not meddling for the world’s oldest and greatest democracy to stand with them.

The administration’s Iranian policy was flawed from the beginning. It came into office with the idea that it could negotiate a “grand bargain” with the mullahs on Iran’s nuclear program and would meet with its rogue leader without preconditions. With the mullahs’ help, to please Iran’s electorate, Obama’s flawed elections, that has all gone by the boards. Of course, it was always destined to fail.

Was it ever realistic to believe this is a government with which we can successfully negotiate—a government that sponsors terrorism and murders peaceful student protesters and does not even have the mandate of its own people? What do we think we can give this government more than it wants a nuclear weapon?

What is more, what message do we send to the Iranian people, many of whom have been arrested, tortured, and had family members killed, by negotiating with this regime while it robs its own people of their fundamental rights? I do not believe the United States can deal in good faith with a regime that so violently suppresses its own citizens. I hope the President will come to agree.

With regard to North Korea, the administration’s reaction to North Korea’s recent activity is also of concern. As Pyongyang prepares for the transition of power from Kim Jong Il to his son Kim Jong Un, the regime’s behavior has become increasingly belligerent and unpredictable.

North Korea has pulled out of the six-party negotiations, restarted its nuclear program, tested launched several missiles in the last few months, and is anticipated underground nuclear test. The regime even declared that it has now abandoned the armistice that brought a cease-fire to the Korean war.

What has the Obama administration done to respond to the potential for an increased threat to the security of other nations in the region and indeed to the very security of the United States? The answer is disappointing. It has cut missile defense.

The President’s budget cut the Missile Defense Agency’s budget for fiscal year 2010 by $1.2 billion and decreased the planned number of Ground-Based Interceptor missiles in Alaska from 44 to 30. These proposals amount to almost a 15-percent cut in the Missile Defense Agency’s budget and a major reduction in our most important portfolio—at the very moment we should be increasing our capability to defend ourselves and our allies from the North Korean threat.

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Let us resist the temptation to fall back on . . . partisanship.

But partisan politics looms larger than ever. Congress is urged to rush costly legislation through, despite frequent Republican concerns about the price tag and the efficacy of the legislation. Indeed, the President’s budget and stimulus both passed mainly on party lines.

As Michael Barone recently wrote, the President:

Brian (to Washington) the assumption that there will always be a bounteous private sector that can be plundered on behalf of political favorites. Hence, the takeover of Chrysler and GM to bail out the United Auto Workers union.

Six months later, President Obama continues to take unnecessary jobs at his predecessor. On his promise for change, more government debt, government bailouts, and a transfer of the economy from the private to the public sector are not what Americans are looking for.

Americans want the President and Congress to support the private sector to help get back on track, without tidal waves of spending, debt, and new taxes. They want real health care reform without a government takeover, and they want the President to lead us in this dangerous world, acknowledging the harsh reality that not every rogue regime will respond to smooth talk.

In the next 6 months, and beyond, I hope the President will take a more sensible and, indeed, more bipartisan approach, so we can all accomplish what the American people seek.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak as a morning business and that Senator KAUFMAN of Delaware be recognized after I have concluded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. I thank you very much.

Mr. President, I thank the minority whip for his statement on the floor. I would like to suggest I see things a little differently and suggest there are a couple items I would like to speak to.

First, on Guantanamo:

President Obama took office and realized we had a serious problem in Guantanamo Bay. It is a safe and secure facility, but it has become a recruiting tool for terrorists around the world. That is not just his conclusion; it is the conclusion of people I respect very much. Among those who called for the closing of Guantanamo include the following: GEN Colin L. Powell, former Chairman of the Joint Chiefs of Staff and Secretary of State under President George W. Bush; Republican Senators JOHN MCCAIN and LINDSEY GRAHAM; former Secretaries of State James Baker, Henry Kissinger, and CONDOLEEZZA RICE; Defense Secretary Robert Gates, who served President Bush and President Obama; ADM Mike Mullen, Chairman of the Joint Chiefs of Staff; and GEN David Petraeus.

These are not politicians, these are people who represent both sides of the political aisle—Democrat and Republican—who have concluded that keeping Guantanamo open, unfortunately, is going to continue to give encouragement to the recruitment of terrorists around the world.

President Obama announced that we should start to close Guantanamo, we should start deciding the fate of each of these prisoners, and it is high time we do.

Under President George W. Bush, hundreds of Guantanamo Bay detainees were released. They were arrested, incarcerated, questioned, and released, no charges against them. It was accepted. We made mistakes on the battlefield. People came up collecting bounties for turning in prisoners who turned out not to be dangerous. These people were released. The overwhelming majority of these people didn’t cause any trouble beyond that. Some did. That is a fact. I will not ignore it.

Now comes the Republican side of the aisle arguing that it is unsafe for us to transfer Guantanamo prisoners from Guantanamo to federal prisons in the United States. I have heard the arguments. They say it is unsafe in my community of Springfield, IL, to have a convicted terrorist; that it is a threat to all the people, the 12.5 million people who live in Illinois, and they believe that is the case around the country. But if we look at the facts, that argument doesn’t stand up.

Today, in the prisons of the United States, the federal prisons, we have 355 convicted terrorists currently incarcerated, being held safely and securely. They are no threat to our safety. In my hometown of Springfield, not far away, just in southern Illinois, maybe a little over 100 miles, is Marion Federal Penitentiary. It is the prison where I grew up. People came up collecting bounties in the best interests of the security of the United States.

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Senator KYL initiated his remarks by noting that we have reached the 6-month anniversary of the inauguration of President Obama. It is hard to imagine it seems to have just been flying by if you are on the floor of the Senate with all of the activity and all of the business we have considered. But he made special notice of the stimulus bill.

I wish to remind people what the President inherited when he took his oath of office 6 months ago. Our economy was losing on average 700,000 jobs a month when President Obama took his oath of office. The stock market had fallen by more than 40 percent. Jobless claims were over 6 million. People were losing their homes in crisis, freezing lending, and nearly $10 trillion in wealth had been lost in the stock market. Virtually all of us who had 401(k)s or savings involved in the stock market knew exactly what happened to those savings. We lost a lot of value.

As President Obama took office, this is what he inherited. He came to the
Congress and said: We can’t stand idly by. We have to do something. We have to try to energize this economy, create and save American jobs; give businesses and families a fighting chance. He asked for both sides of the aisle to cooperate.

On the House side not a single Republican House Member would join the President in this effort, in this attempt at a bipartisan effort to deal with the economic situation in our country. On this side of the Rotunda, three Republican Senators stepped up and said they would work with the Democrats to try to find a way to help put our economy back on its feet—only three, despite the President’s invitation for all of them to join in this conversation to try to find a compromise to work toward a solution to the problems we faced.

At the end of the day, the bill was a $787 billion recovery and reinvestment bill, to be spent over 2 years. We are now 4 months into that 2-year period—150 days, roughly, into that 2-year period—and Senators are coming to the Senate floor, as did the minority whip, and saying it has failed.

We need to take a look and see what it has done. So far we have actually spent about $56 billion out of the $787 billion, a very small amount. We have obligated—which means we have promised to spend—up to $290 billion, 4 months into it. We are trying to address this carefully so taxpayers’ funds are not wasted. But there are still those who voted against it initially who come to the Senate floor, as the previous Senator did, and say it was a failure to have done it.

Several things should be noted. First, they had no alternative. They had no substitute. They had no option for the economy other than to stand idly by, take our system as it is, and hope it would be better in the morning. Not good enough.

If we are going to deal with an economy with so many jobs lost, so many businesses failing, standing idly by waiting for the economy to take its way out would have been a disaster.

This stimulus package from President Obama stopped what could have been the collapse of the U.S. economy and the global economy. We still have a long way to go. We are not out of this recession, but it could have been worse. For those who say we shouldn’t have done it, let me tell my colleagues: Over 40 percent of the money in the stimulus package went back to tax breaks for working families in America. Ninety-five percent of working families across America will see the benefits of the Making Work Pay tax credit in their paychecks. Those dealing with job loss, unemployment, got an additional $25 a week. It doesn’t sound like much unless you have no other source of income.

I take it from their statements those on the other side of the aisle think the tax breaks for working families should not have been enacted. They oppose the unemployment compensation benefit increases.

We also gave a helping hand to unemployed families to keep health insurance for their kids and their families. That was part of the stimulus package, as well as money for nutrition assistance, food stamps for some of these unemployed families. So when the other side of the aisle says we didn’t have to do this, they are basically saying we shouldn’t have helped these unemployed families and a lot of other families across America. I think it was the right thing to do.

We are making investments in the infrastructure of America as well. Basically, we are trying to make an investment that will give us a recovery in jobs. We were losing about 25,000 jobs a day when this initially hit. Now we are trying to build back from that to create and save jobs across America. In my home State of Illinois, it means infrastructure projects, transportation infrastructure projects, and many others. So we are just beginning. We are working in this situation. We have stopped the worst from occurring in the economy. We are going to see a turnaround, I hope, sooner rather than later.

The President’s words warrant repeating: This is not going to happen overnight, and we have to be open to the idea that it is going to take some time for us to make the kind of recovery we absolutely need.

Secondly, the Senator from Arizona talked about health reform. Republican after Republican has come to the Senate floor—not all of them but many of them—and criticized the idea of health care reform, but they are ignoring the obvious. We have a serious problem with health care in America. We are spending twice as much per person as any nation on Earth for health care, and the results—the health care results don’t show it. Many times countries spend far less, have far better outcomes in terms of curing diseases and life expectancy.

So we should ask the hard questions: Shouldn’t our money be better spent? Shouldn’t it be more effectively spent? Then we take a look at what we face when it comes to health insurance premiums, and we find out that premiums over the last several years have been going up three times the increase in the average worker’s wages in this country.

We are falling further and further behind as the costs of health care go beyond the grasp of individual families and small businesses. So we have to tackle this, and the American people know we do. They understand this system is, unfortunately, out of control.

They have called on us to fix what is broken and to preserve those parts of our system that are important.

One of the things we want to make sure we do is to say: If you have a health insurance policy with your current employer, or if you have your family or your business, you can keep it. Nothing we say or do in the law will change that. It is ultimately your decision.

Secondly, we want to preserve the relationship between doctor and patient—the confidential relationship, the trust that has developed between them so that you can take a member of your family or yourself to a doctor and believe it is a confidential conversation and advice possible for you. We want you to have that choice and make that decision.

What we want to stop is the mis-treatment of Americans and American businesses. You know what I mean: If you happened to have had an illness last year and it becomes a preexisting condition this year and you find out your health insurance won’t cover it, or if they are going to cover it but dramatically increase your premiums, in fact, they increase your premiums without notice or any kind of forewarning that it is going to occur, these sorts of things trouble people.

The fact that their doctors have to get into a fight with health insurance companies as to appropriate medical care and whether a person should be hospitalized; the fact that health insurance companies, private health insurance companies, have turned out to be some of the most profitable companies in America, even during the recession. All of these things are fair warning that if we don’t do something about health care in this country, the costs are going to break the bank, not only for individuals, families, and businesses, but for governments at every single level.

Today many Americans live in fear of the astronomical costs that will occur if they or their families experience a health care emergency. Two and a half Illinoisans in my State of 12.5 million, more than one out of every five under the age of 65, is in a family who must spend more than 10 percent of its income on health care costs. Among those, one-fourth of those are spending more than 25 percent of their income on health care costs.

The other side says: Just leave well enough alone. This isn’t “well enough.” For these families, this is intolerable and unsustainable. It is an astounding burden. It is 30 percent more people than the number facing the 25-percent payment that faced it 8 years ago.

There is also concern on the other side about cap and trade. Well, cap and trade is a bill that has passed the House to address global warming, to try to assign a value to carbon in our economy. Just last week we had the CEOs of three major companies come speak to us: Duke Energy, one of the largest energy companies in America, DuPont, and Siemens. They favor the establishment of a cap on carbon. They said: Give us a transition period in which to make our plants cleaner, our processes more energy effective, and we can meet that goal. We have the creativity to do it.
So we can reduce global warming and reduce the pollution and our dependence on foreign oil. In the meantime, we will create new businesses; new products; new technology that will be energy efficient; new jobs, 21st-century jobs we will pay well, and jobs we can keep right here in America. There are those who oppose this and say leave it as it is. Our continued dependence on foreign oil should be a source of concern to every single person.

I am also genuinely concerned that the world that my grandson might be a compromised world because of some of the bad environmental decisions that have been made by my generation. We have an opportunity to change that, to make this a cleaner planet, to show ourselves as good stewards of the Earth that God gave us, and we can work together in a bipartisan fashion to find a way to encourage the right conduct and discourage bad conduct when it comes to these energy issues. We don’t want to touch it; they just want to criticize it. At the end of the day, we won’t be judged as having met our responsibility if we do nothing.

I know Senator KAUFMAN is on the floor and will ask for recognition at this time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

APOLLO MOON LANDING ANNIVERSARY

Mr. KAUFMAN. Mr. President, I rise today, on the 40th anniversary of the Apollo 11 Moon landing, to highlight the importance of scientific research and development to America’s economic recovery.

Forty years ago, astronauts Neil Armstrong and Buzz Aldrin took the first human steps on the Moon. It was, needless to say, a historic moment for the United States and the world.

Eight years prior, President John F. Kennedy declared before a joint session of the Congress that the United States “should commit itself to achieving the goal, before the decade is out, of landing a man on the moon.” Armstrong’s famous words, “One small step for man, one giant leap for mankind,” marked the fulfillment of President Kennedy’s goal. That momentous step signaled the coronation of the United States as the world leader in the sciences—a distinction we held through the rest of the 20th century but which is now in jeopardy.

Make no mistake, the dawn of a renewed American powerhouse economy will not come without the same determination that propelled America’s journey to the Moon. The key to America’s success in a global economy will be the research, innovation, and hard work of our Nation’s scientists and engineers.

Americans at the time were inspired by a sense of patriotism and dedication to explore the universe following the Soviets’ successful launch of the Sputnik satellite. The race to the Moon launched a substantial Federal investment in scientific and technological research and development. Students across the country were inspired to study engineering, and I, a working engineer at the time, was among those inspired.

This extraordinary investment in research and development helped fuel the Nation’s economic growth and left an indelible mark on our society. The discoveries and innovations of this time created new opportunities, industries, companies, new services, and new ways of delivering old products and services more efficiently.

Unfortunately, since that time our investments in research and development have been cut back. Other nations may soon outpace us in pursuit of the technological and scientific discoveries that will define this generation. If we hope to assert our country’s preeminence in these fields, we must again invest significantly and responsibly in research and development.

The vitality of our economy rests with our ability to be the world’s leader in innovation. As we face some of our greatest economic challenges, the scientific and engineering community has the greatest potential to find avenues for what we need most: new, sustainable jobs. That is why I am pleased President Obama has set the goal to devote more than 3 percent of our economy to research and development—a feat that will require significant Federal as well as private investment. The American Recovery and Reinvestment Act has already provided over $20 billion of Federal funds to reach this target, and it is our job to see that these resources are spent wisely in order to achieve the maximum economic benefit.

But the national goal is also about research and development investment by private industry, which the government can help foster with pro-innovation policies. We also need to encourage a new generation of engineers through education policies that emphasize science and math.

I am confident that engineers will continue to foster the research and innovation that will lead America on the path to economic recovery and prosperity. They will help us build a clean energy economy, stay competitive in a globalizing world, and drive the real-world applications from our Nation’s health and science research to improve our quality of life. Moreover, these discoveries and innovations will create millions of new jobs and invest in our future.

Just before Apollo 11 returned to Earth, Armstrong concluded that:

The responsibility for this flight lies first with the citizenry of the United States and the citizens of science who have preceded this effort; next, with the American people, who have, through their will, indicated their desire; next, with 4 administrations and their Congresses, for implementing that will; and then, with the agency and industry teams that built our spacecraft, the Saturn, the Columbia, the Eagle, and their spares; and the backpack that was our small spacecraft out on the lunar surface.

Just as we all came together in the race to the Moon over 40 years ago, we need a renewed urgency for science and engineering. The American people, the administration, Congress, agencies, and industries must unite to support the research and development that will lead us to new cures in health, energy, technology, and security, but to new jobs and, ultimately, a sustainable economic recovery.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. NELSON of Florida. Mr. President, before we adjourned last week we passed a bill that authorized $50 billion for the Department of Energy to provide assistance for energy projects. I did not support that bill, because it was misdirected. It was politically motivated. It was not designed to meet the needs of the country.

The American people are looking to us to find solutions to the problems that face our country. The energy bill we passed last week was not the right solution.

The $50 billion for the Department of Energy is not the right solution. It is an example of the problems in our Congress.

[Applause]

I was a lieutenant in the Army and I had an opportunity to see the world. I went to the Embassy in Budapest, Hungary, and asked if they had a TV so that we could see the launch. They said no, but to take your shortwave radio and go outside of the city on those hills and put your radio antenna up, and you can get the BBC, which we did. They cut into NASA control, and we three young Americans stood on that hill cheering as Apollo 11 lifted off.

We fulfilled the human dream of boundless flight to another celestial body. Neil Armstrong promised us that it was “one small step for man, one giant leap for mankind.” It was to be the first step on our way to Mars and beyond, toward new knowledge of our universe and, perhaps, the discovery of life itself.

Yet today we are mired in a debate about the direction of our space program. We had a little victory last week when we had unanimously confirmed the new Administrator and Deputy Administrator of NASA. But now we are in a debate of where the space program should go. The answer should be obvious: Our thirst for knowledge requires that we explore the universe. I often say that this country is built on natural curiosity, and the space program is the most obvious example of that.

Earlier today, I was on one of the network talk shows, and the whole idea was, what does it do for education? My goodness, look at the competitive edge America has in the global economy today from our superiority in math, science, technology, and engineering that occurred over four decades ago.

Why? Because young people were so inspired by the extraordinary feats we
were accomplishing in our space program that they wanted to go into engineering, math, science, and technology. That produced a generation of these people from whom we are continuing to reap the benefits.

Of course, these flight programs enrich life here on Earth. How does it do that? Well, if you think about it, four decades ago what we did was—if we were going to the Moon, we had to have highly reliable systems that were small in volume and light in weight. That led to the revolution in microminiaturization. For instance, my watch is a part of the space program. All of the microminiaturization was spawned off of that necessity to get things smaller, more reliable, and light in weight. That is just one example of how it enriches life here on Earth.

If you think back to the visionary President we had who started this whole thing, President Kennedy said the opening of the vistas of space would be the ultimate conquests and grave dangers. Indeed, it did. But he said that “this country was not built by those who rested.”

So today, on this historic anniversary, let us not rest. Our President needs our exploration as a national priority. Our Nation needs a clear goal, and that is a lunar base, humans on Mars, and then beyond. It is up to us to continue the greatest adventure. It is up to us to reach for the stars.

I yield the floor, and I suggest the absence of a quorum.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum be rescinded.

Mr. LEVIN. The PRESIDING OFFICER. The bill clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEVIN. Mr. President. I ask unanimous consent that the order for the quorum be rescinded.

Mr. LEVIN. The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, I ask unanimous consent that it be in order for the Senate to consider en bloc the following amendments: amendments Nos. 1614, 1615, and 1617.

Mr. LEVIN. Mr. President. I ask unanimous consent that the amendments be modified with changes at the desk and that once modified, the amendments be agreed to, as modified, and the motions to reconsider be laid upon the table en bloc.

Mr. LEVIN. I now call up amendments Nos. 1614, 1615, and 1617 and ask that the amendments be modified with changes at the desk and that once modified, the amendments be agreed to, as modified, and the motions to reconsider be laid upon the table en bloc.

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the fairness of the death penalty’s administration. As former Supreme Court Justice Sandra Day O’Connor has stated “if statistics are any indication, the system may well be allowing some innocent defendants to be executed.” How do we continue to expand a system that likely leads to the execution of innocent defendants?

The U.S. Government should not be in the business of taking the lives of innocent Americans. Supreme Court Justice Anthony Kennedy once said that the deliberate institutionalized taking of human life by the state is the greatest degradation of the human personality imaginable. We must not expand this flawed system by accepting Senator Sessions’ broad amendment.

In 2007, New Jersey became the first State to repeal the death penalty since the modern era of capital punishment began in the 1970s. New Mexico followed in 2009. The number of States without a death penalty has now increased, and some have begun to recognize that flawed administration of the death penalty has dire consequences—no matter how slight or unintentional that flaw may be.

The American public has also recognized the inherent flaw created by a society that supports the death penalty. A 2008 Gallup poll found that support for the death penalty is at its lowest level in the last 30 years. American citizens are deciding that they will not tolerate this ineffective and cruel punishment system.

Furthermore, there is no denying that there is a pattern of racial bias in death sentencing. A study in California found that those who killed Whites were over three times more likely to be sentenced to death than those who killed Blacks, and over four times more likely than those who killed Latinos. In addition, a study found that in 96 percent of the States where there have been reviews of race and the death penalty, there was a pattern of either race-of-victim or race-of-defendant discrimination, or both. Administration of the death penalty is flawed, and that flaw disproportionately affects racial minorities.

The average cost of defending a Federal murder case when the death penalty is sought is $260,000. That is about eight times the cost of a Federal murder case in which the death penalty is not sought. It has been shown time and time again that sentencing an individual to life in prison is far cheaper than the administration of the death penalty. For example, the California death penalty system costs taxpayers $114 million a year beyond the costs of keeping convicts locked up for life. Taxpayers have paid more than $250 million for each of the State’s executions. While the monetary costs of seeking the death penalty are high, the possibility of executing an innocent American is the ultimate cost.

Some argue in favor of the death penalty because they believe it deters individuals from committing some of the most severe crimes. According to a survey of the former and current presidents of the Nation’s top academic criminology societies, 88 percent of these experts rejected the notion that the death penalty acts as a deterrent to murder. In addition, a Hart Research Associates poll found that the majority of the chiefs do not believe that the death penalty is an effective law enforcement tool. If the death penalty does not deter violent crime, we shouldn’t ask our government to pay for it.

Stephen Bright is a preeminent scholar on the death penalty. In his law review article Will the Death Penalty Remain Alive in the Twenty-First Century?, he states: “If we here in the United States examine our own system, face its flaws, and think about what kind of society we want to have, we will ultimately conclude that, like slavery and segregation, the death penalty is a relic of another era, that it represents the dark side of the human spirit, and that we are capable of more constructive approaches to the problem of violence.

All violent crime is reprehensible and deserves to be punished. However, as Stephen Bright points out, we are capable of more constructive approaches to dealing with crime than using the death penalty as much as we do. The death penalty is a relic of the past. It has been proven to lead to wrongful executions where innocent lives are lost at the hand of their government. Although most developed nations in the world have abandoned the death penalty, the United States, which purports to be a leader in the protection of human rights, continues to increase the number of death-eligible offenses that are on the statute books.

The Kennedy amendment being offered will ensure consistency with existing federal law and Supreme Court precedent by setting forth clear standards for the use of the federal death penalty only in hate crimes cases where the aggravating circumstances are severe. Given the lack of documentation of cases, the Well-Documented Mistakes and Racial Disparities in Capital Punishment study, which was conducted by Professor Stephen Bright and his colleagues, revealed disturbing and unacceptable racial disparities in death penalty cases. The average death penalty cases reviewed in the study were found to contain over 100 inappropriate factors that affected decision-making in hate crime cases.

The Kennedy amendment is modeled after an existing Nebraska State law, and will establish a system of meaningful proportionality review in capital cases. The Nebraska Court determined that a case is not among the worst of the worst of hate crimes resulting in a homicide, it can dismiss the government’s request for a death penalty at the conclusion of the guilt trial or at the conclusion of the penalty phase if the finding of aggravating circumstances is submitted to the jury. Under the Kennedy amendment, the test applied by the trial court to determine whether a case is among the worst of the worst is whether death sentences are sought and imposed more than half the time in similar Federal cases. This information will enable the court to assess the extent to which race or other systemic factors may have been a factor in prior capital charging and sentencing decisions in hate crimes that have resulted in the victim’s death. The Kennedy amendment’s requirements are a significant improvement over existing Federal practice in death penalty cases.

Senator Sessions’ amendment increases the number of death-eligible offenses. It expands the use of the death penalty to two new offenses—those created by the Matthew Shepard Act. It is time to stand up against expansion of the death penalty. With this statement, I submit several letters of opposition to the Sessions amendment and place amendments proposed by Senator Sessions. I urge my colleagues to vote against Senator Sessions’ amendment and to support the Kennedy amendment to correct the flaws in Senator Sessions’ proposal.

In addition, Senator Sessions has introduced an amendment that creates a new Federal criminal offense for cases involving assaults or battery of a U.S. serviceman—or a member of the veteran’s immediate family. It creates a new Federal crime to punish individuals who knowingly destroy or injure the property of an active or retired serviceman or the property of an immediate family member, or conspires to do so. Crimes against veterans, members of the armed service are reprehensible. It is undeniable that our Nation is held together by the protection that these brave men and women provide each day. This amendment places another mandatory minimum in our Federal code. Mandatory minimums are unjust, unwise and unnecessary. Such sentences tie the court’s hand to review the facts of an individual case. I hope that problems with this broad language will be addressed when the Senate considers this legislation. The inclusion of a mandatory minimum can be worked out in conference.

Finally, I appreciate that we were able to work with Senator Sessions to make some modifications to his amendment regarding the issuance of Attorney General guidelines for hate crime offenses. For over 40 years, the Justice Department’s record demonstrates objective decisionmaking with selecting hate crime cases for prosecution—regardless of the administration in charge.

DOJ guidance and professional responsibility rules already guard against any nonmeritorious prosecution. This amendment— or Senator Sessions’ amendment—could have prevented “mistake of fact” cases—such as an attack against a White woman whom the defendant believed to be African American or a case based upon another inappropriate factor, perhaps a systemic factor in prior capital charging and sentencing decisions in hate crimes that have resulted in the victim’s death. The Kennedy amendment’s requirements are a significant improvement over existing Federal practice in death penalty cases.

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could also impede prosecutions where a hate crimes victim was perceived to be African American, Latino, or gay because the cooperation and assistance from Senator SESSIONS’ staff, I believe that the modified version of this amendment will address these concerns so that the amendment will not be interpreted to limit the scope of victims who are protected under the Matthew Shepard Act.

Mr. President, I ask to have the letters to which I referred printed in the RECORD.

The letters follow.

DEAR SENATOR: On behalf of the American Civil Liberties Union, a non-partisan organization with more than a half million members, countless activists and supporters, and 500 affiliates nationwide, we write to urge you to oppose Senate Amendment 1615, being offered by Senator Jeff Sessions (R–AL) to the National Defense Authorization bill (S. 1390); Sessions amendment is unconstitutional.

The ACLU urges you to oppose the Sessions Amendment (S.A. 1615) to the defense authorization bill and to vote “NO” when it comes to the floor. The ACLU will score this vote. Please do not hesitate to contact Chris Anders at (202) 675–2308 if you have any questions regarding this amendment or the underlying hate crimes provision.

Sincerely,

MICHAEL W. MACLEOD-BALL,
Institute Director, ACLU Washington Legislative Office.

CHRISTOPHER E. ANDERS,
Senior Legislative Counsel.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,

DEAR SENATOR: On behalf of the civil rights, religious, professional, civic, and educational groups below, we write to urge you to oppose two unnecessary and harmful amendments offered by Senator Sessions to S. 1390, the FY 2010 Department of Defense Authorization bill.

As supporters of S. 909, the Matthew Shepard Hate Crimes Prevention Act (HCPA), we supported the addition of this legislation as an amendment to S. 1390 last year. At that time, the proposed amendments to support the HCPA, which will be codified at 18 U.S.C. § 245. FBI investigators and officials have always opposed adding the death penalty to this legislation. The House and Senate sponsors of this unconstitutional and misguided amendment seeks to expand the reach of the federal death penalty, including non-homicide offenses, by adding a capital punishment provision that the Senate adopted by unanimous consent on Thursday night.

Capital punishment has been proven to be an unreliable and expensive means of punishment and Congress should oppose any effort to expand its scope and reach. According to the Death Penalty Information Center, 135 innocent people have been exonerated from death row since 1973, including five so far in 2009 alone. Such a high error rate illustrates the fallibility of our nation’s death penalty system. Indeed, chronic problems, including inadequate defense counsel and racial disparities, have always plagued the death penalty and are nowhere more evident than in United States.

In 1993 report entitled “Death by Discrimination—The Continuing Role of Race in Capital Cases” American Bar Association found that even though blacks and whites are murder victims in nearly equal numbers of crimes, 80 percent of people executed since the death penalty was reinstated have been executed for murders involving white victims. More than 20 percent of black defendants who have been executed were convicted by all-white juries. Even one supports the death penalty in theory, there is no justifiable reason to expand our system of capital punishment while such discriminatory impacts continue to exist.

A troubling record of the death penalty being imposed on defendants who were later found innocent, along with a history of racial and geographic disparities in its use, have spurred states to move away from its use. In 2007 and 2008, New Jersey and New Mexico abolished the death penalty, bringing to 15 the number of states (including the District of Columbia) that currently have no death penalty.

In addition, the number of death sentences returned by juries has declined precipitously—from around 300 a year in the 1990s to approximately 120 in the past few years.

The ACLU is also concerned that the Sessions Amendment would unconstitutionally expand the reach of the federal death penalty to include certain non-homicide crimes. The United States Supreme Court has already held that the death sentence is an unconstitutional and discriminatory sentence (see Eberheart v. Georgia); sexual abuse (see Coker v. Georgia and Kennedy v. Louisiana); and attempted murder (see Emund v. Florida). The Sessions Amendment would unconstitutionally expand the scope of the Sessions Amendment. To now expand the reach of the federal death penalty to these non-homicide crimes would be clearly unconstitutional, under recent Supreme Court precedent.

The ACLU has a long history of supporting civil rights legislation, including legislation responding to civil rights violations. While we did not support the underlying hate crimes provision in the defense authorization bill because of First Amendment weaknesses, an expansion of the federal death penalty stands in stark contrast to furthering the cause of civil rights in the United States.

The ACLU urges you to oppose the Sessions Amendment (S.A. 1615) to the defense authorization bill and to vote “NO” when it comes to the floor. The ACLU will score this vote. Please do not hesitate to contact Chris Anders at (202) 675–2308 if you have any questions regarding this amendment or the underlying hate crimes provision.

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MICHAEL W. MACLEOD-BALL,
Institute Director, ACLU Washington Legislative Office.

CHRISTOPHER E. ANDERS,
Senior Legislative Counsel.

JENNIFER BELLAMY,
Legislative Counsel.

The Continuing Role of Race in Capital Cases
American Bar Association
American Jewish Committee; Amputee Coalition of America; Asian American Justice Center; Association of University Centers on Disability; Bazeelon Center for Human Law; B'Nai B'rith International; Disability Rights Education and Defense Fund; Family Equality Council; GLSEN—The Gay, Lesbian and Straight Education Network; Helen Keller National Center; National Coalition on Deaf-Blindness; Human Rights Campaign; Human Rights First; Jewish Council for Public Affairs; Legal Momentum; NAACP Legal Defense and Educational Fund; National Association of the Deaf; National Council of La Raza; National Disability Rights Network; National Gay and Lesbian Task Force Action Fund; National Urban League; Orthodoxy.USA; Parents, Families and Friends of Lesbians and Gays (PFLAG) National; People for the American Way; Religious Institute; School Social Work Association of America; Sikh American Legal Defense and Education Fund; The American-Arab Anti-Discrimination Committee (ADC); Union for Reform Judaism; Unitarian Universalist Association of Congregations; United Methodist Church, General Board of Church and Society; Women of Reform Judaism; YWCA USA.


DEAR SENATOR: I write on behalf of the American Bar Association to urge you to vote against the Sessions Amendment (No. 1615) to create a death penalty offense for what are now non-capital hate crimes. We understand that the amendment will be offered during consideration of S. 1388, Department of Defense authorization legislation.

For decades, the American Bar Association has supported federalization of the death penalty in the United States and identified serious concerns that must be addressed by all jurisdictions that seek to impose it. Among these are: (1) the need for competent counsel in capital cases; (2) the need for proper procedures for adjudicating claims in capital cases (including the availability of habeas corpus); and (3) racial discrimination in the administration of capital punishment. The ABA has called for reforms that are consistent with many long-standing ABA policies intended to ensure that death penalty cases are administered fairly and impartially, in accordance with due process, and to minimize the risk that innocent persons may be executed.

The proposed Sessions Amendment to S. 1388 (“Amendment”) fails to address the profound concerns voiced by the ABA and others about the lack of fairness and due process in the federal death penalty system. To expand an already “broken system” without the availability of counsel, the system would risk the execution of innocent persons and other acts of injustice.

The Amendment would also result in an unprecedented and unconstitutional expansion of the federal death penalty. Unlike every other state death penalty statute in the United States, a death sentence pursuant to this Amendment would result in the execution of a victim. The United States Supreme Court has definitively ruled that a death sentence is inappropriate when the offense did not result in the death of the victim. Kennedy v. Louisiana, 554 U.S. 407 (2008). The Court held that none of the laws were “purposefully aimed at the crime against an individual involved no murderer, were in keeping with the national consensus restricting the death penalty to the worst offenses. The Justice found that the Amendment is not consistent with constitutional principles or Supreme Court precedent.

The ABA strongly condemns hate crimes; we adopted policy in 1987 that states that “the ABA condemns crimes of violence including those based on bias or prejudice against the victim’s race, religion, sex, national origin, sexual orientation, or minority status, and urges vigorous efforts by federal, state, and local officials to prosecute the perpetrators and to focus public attention on this growing national problem.” Likewise, ABA supports the aggressive prosecution and deterrence of these offenses. However, in light of its experience with the death penalty, the ABA opposes an expansion of the current federal death penalty system so that these crimes would carry a potential death sentence for conviction.

The American Bar Association thus urges you to vote against this Amendment when it is considered on the Senate floor.

Sincerely,

THOMAS M. SUSMAN,
Director, Governmental Affairs Office.

AMENDMENT NO. 1615

Mr. LEVIN. Mr. President, I ask unanimous consent that the Sessions Amendment numbered 1616 now be the pending business, and that at 4:10 p.m., the Senate proceed to vote in relation to the amendment, with the time until then equally divided and controlled in the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mr. Sessions, proposes an amendment numbered 1616.

Mr. LEVIN. Mr. President, I ask unanimous consent, with the permission of the Senator from Alabama, that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To prohibit assault or battery of a United States serviceman on account of the military service of the United States serviceman or status as a serviceman.)

At the appropriate place, insert the following:

SEC. 1. ATTACKS ON UNITED STATES SERVICE- MEN.

(a) IN GENERAL.—Chapter 67 of title 18, United States Code, is amended by adding at the end the following—

1389. Prohibition on attacks on United States servicemen on account of service.

(2) the term ‘United States serviceman’—

(2) the term ‘immediate family member’—

(3) the term ‘United States serviceman’—

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 67 of title 18, United States Code, is amended by adding at the end the following—

1389. Prohibition on attacks on United States servicemen on account of service.

Mr. LEVIN. I yield the floor.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Alabama.

Mr. SESSIONS. Did we get an agreement on the time before we vote?

The PRESIDING OFFICER. The time is equally divided until 4:10 p.m.

Mr. SESSIONS. Madam President, I thank Senator LEVIN. It is always a pleasure to work with him and others who work with us to make sure that these hate crimes that have resulted—easily in multiple murders, and one is easily a crime to knowingly assault, batter a serviceman or immediate family member or knowingly destroy or injure
their property "on account of the military service or status of that individual as a United States serviceman . . . ."

It is not a total expansion of Federal law, but it says if you are attacked or assaulted, because you are a military member or your family members are simply because you are a member of the U.S. military serving your country, then the Federal Government would obviously have the ability to prosecute because it is a high duty, and a higher responsibility, for the U.S. Government to protect its soldiers from assaults arising from their service to our country.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SESSIONS. Madam President, we have had problems with these assaults on our military officers. This will be a good step in correcting that situation. I thank the Chair for the opportunity to speak. I hope my colleagues will support this amendment.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, first, I thank the Senator from Alabama for this amendment. He is a valued member of the Armed Services Committee. He knows, as we all know, because of our work on the Armed Services Committee, how our men and women in uniform protect us, and we should do everything we can when it comes to our criminal laws to protect them and their families. This amendment is aimed at doing this. It would create a new Federal crime. It is appropriate we do that. I support the amendment.

I suggested the absence of a quorum. The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEVIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 1616) was agreed to.

The amendment (No. 1616) was agreed to.

Mr. DEMINT. I ask unanimous consent that I be allowed to speak for 5 minutes and Senator HUTCHISON to follow me.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 1616.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Ms. LANDRIEU), and the Senator from Maryland (Ms. MIKULSKI) are not present.

Mr. KYL. The following Senators are not present: the Senator from Utah (Mr. BENNETT), the Senator from Missouri (Mr. BOND), the Senator from Florida (Mr. MARTINEZ), and the Senator from Alaska (Ms. MURKOWSKI).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 92, nays 0, as follows:

<table>
<thead>
<tr>
<th>Yeas</th>
<th>Nays</th>
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<tbody>
<tr>
<td>CAKES</td>
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<td>LANDRIEU</td>
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Alaska: Enzi, Menendez, Merkley
Arizona: Feingold, Murray, Nelson (FL)
Arkansas: Feinstein, Pryor
California: Frank, Reid
Colorado: Harkin, Risch
Connecticut: Beg, Roberts
Delaware: Boozman, Rockefeller
District of Columbia: Burr, Sanders
Florida: Brown, Schumer
Georgia: Burr, Sessions
Hawaii: Brownback, Shelby
Idaho: Collins, Snowe
Illinois: Cardin, Specter
Indiana: Corker, Stabenow
Iowa: Cornyn, Tester
Kentucky: Coburn, Thune
Louisiana: Conrad, Udall (CO)
Maine: Collins, Udall (NM)
Maryland: Coons, Vitter
Massachusetts: Crapo, Voithovich
Michigan: Crapo, Warner
Minnesota: Durbin, Whitehouse
Missouri: Ensign, Wicker
Montana: Ensign, Wyden
Nebraska: Johnson, Kaufman
Nevada: Klobuchar, Kyl
New Hampshire: Klobuchar, Kyl
New Jersey: Kyl, Vitter
New Mexico: Landrieu, Voithovich
New York: Lieberman, Warner
North Carolina: Lieberman, Whitehouse
North Dakota: Brown, Wicker
Ohio: Brown, Wicker
Oklahoma: Coburn, Wicker
Oregon: Crapo, Wyden
Pennsylvania: Coons, Wyden
Rhode Island: Crapo, Wyden
South Carolina: DeMint, Wyden
South Dakota: Cornyn, Wyden
Tennessee: Corker, Wyden
Texas: Corker, Wyden
Utah: Ensign, Wyden
Vermont: Sanders, Wyden
Virginia: Warner, Wyden
Washington: Murray, Wyden
West Virginia: Barrasso, Wyden
Wisconsin: Bingaman, Wyden
Wyoming: Ensign, Wyden

Mr. DEMINT. I ask unanimous consent that the amendment (No. 1616) be printed in the Record.

The amendment (No. 1616) was agreed to.

Mr. DEMINT. Madam President, I know we are in the Defense Authorization bill and a myriad of other things we are sticking into the bill. I'm going to speak in a mad rush that we seem to have been in all year long under this guise of crisis. It is pretty amazing in that legislation that we are talking about would not take effect for several years, so it is incredible we are being told we need to pass this in the next couple of weeks before we go home in August.

The last time the President made grand promises and demanded passage of a bill before it could be reviewed or even read, we ended up with the colossal stimulus failure and unemployment near 10 percent. Now we are being told they misread the economy. But we were urged to pass this within a day or two because we had to do it in order to keep unemployment below 8 percent.

Now the President wants us to trust him again but he cannot back up the utopian promises he is making about a government takeover of health care. He insists his health care plan will not add to our Nation's deficit, despite the nonpartisan Congressional Budget Office saying exactly the opposite.

Today we learned that the President is refusing to release a critical report on the state of our economy which contains facts essential to this debate. What is he hiding? If the actual legislation came close to matching the President's rhetoric, he would have no problem passing this bill with finding the Democratic majorities in both Chambers. But Americans are not being fooled and we are discovering the truth about his plan, which includes rationed care, trillions in new costs and high taxes, and penalties which will destroy jobs, and even government-funded abortion.

In addition, we are looking at a deficit increased by hundreds of billions of dollars and billions in new taxes on small businesses. It says to employers over 4 million more jobs, according to a model by the President's own chief economic adviser, and it could force 114 million Americans to lose their health care, according to a nonpartisan group. That is clear. There is no one in this debate advocating that we do nothing, despite the President's constant straw man arguments. Republicans have offered comprehensive health care reform solutions that cover millions of the uninsured without hiking costs, raising taxes, and rationing care. Since I have been in Congress, we have introduced a number of proposals that would help the uninsured buy their own policies.

We have introduced bills that would allow them to deduct it from their taxes just as businesses do, but our Democratic colleagues have killed it. We have introduced legislation that would allow Americans to buy health insurance anywhere in the country, to make it more competitive and more affordable, but the Democrats have killed it. We have introduced legislation that would allow Americans to use their health savings accounts to pay for an insurance premium, but the Democrats have killed it. We have introduced legislation that would stop all these frivolous and wasteful lawsuits that cause the cost of medicine to go up, but the Democrats have killed it. We have introduced association health plans that would allow small businesses to come together so they could buy policies less expensively, but the Democrats have killed it. Now they want to come back to the government needs to take over health care.

It makes absolutely no sense at all. We can give every American access to affordable health insurance plans if we get out of the way and allow the market to work.

This is no time to rush into another government takeover of another part of the American economy, spending billions of dollars we do not have and raising taxes on the small businesses that create jobs.

There are good solutions. I introduced one a couple of weeks ago that...
would give people fair treatment. If you do not get your insurance at work or you are unemployed, we will give you $5,000 a year to buy health insurance. That is fair treatment. It is the same basic benefit we give people who get insurance at work, good insurance that does not cost any more money.

I would encourage the President to stop the rhetoric, let’s take some time for debate, let’s reform health care in a way that makes it possible for every American to have a health insurance plan that they can afford and that they can keep. We do not need the government to take it over.

I yield for the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

APOLLO 11 ANNIVERSARY

Mrs. HUTCHISON. Madam President, today I rise to speak and commemorate a great milestone; that is, Apollo 11, the anniversary of its landing.

Forty years ago today, on a hot Sunday evening in Texas, three astronaut families and close friends in the Houston suburb of El Lago were gathered around television sets in the privacy of their homes watching grainy broadcasts and listening to the sounds from a small loudspeaker wired from Mission Control conveying the voices of astronaut Charlie Duke’s conversation with the Apollo 11 astronauts during the final moments leading to the first landing on the Moon.

It was an intensely personal experience for all of them and yet one shared by much of the world. Everyone was glued to their televisions, those who could get to a television at that moment, and waiting for the word, wherever they were. It was 3:18 p.m. Houston time when Neil Armstrong announced: “Houston, Tranquility Base here, The Eagle has landed.”

A baseball game in Yankee Stadium in New York was stopped, and the announcement made that America had put men on the moon. The audience erupted in applause and then burst into singing “The Star Spangled Banner.”

In college dormitories, in workplaces, in living rooms across the world, people gathered to watch this broadcast of the “giant leap for mankind” that Neil Armstrong made, and Buzz Aldrin following him onto the surface of the Moon, that attracted and compelled millions of people throughout the world.

The Apollo 11 landing is forever etched in the minds of those who watched it or heard it. They are bound together in the history of mankind in a stunning milestone in the advancement of humankind.

The Apollo Program gave us the very first view through the eyes of human beings, captured and transmitted by their cameras, of the Earth, our own space ship against the infinite backdrop of space. It gave us great advancement in technology, new industries, capabilities benefiting everyone on Earth, especially medical science and quality of life.

Most importantly, it gave us a new vision of ourselves as a nation and the sense of our ability to accomplish things that once seemed utterly impossible and probably were not even thought about but yet had just happened.

The anniversary we celebrate today comes at a time when we need to be reminded that we can overcome challenges and achieve great things when we are committed and dedicated and prepared to take the plate. We face enormous challenges as a nation and as part of the global community: finding solutions to our current economic crisis; ensuring our national security; finding solutions to the many domestic issues we face in health care, unemployment, energy, and the environment.

Many may not recall that in May of 1961, President Kennedy spoke to Congress on “urgent national needs.” He spoke of issues strikingly similar to those we face today. He began with a focus on “the great battleground for the defense of freedom” being in Asia, Latin America, Africa, and the Middle East and of enemies of freedom whom “aggression is more often concealed than open.”

Remember this is 1961, and the President is talking about issues that relate to us today. Yet, he said, as he turned to the economy, he described the need “to turn recession into recovery” and meeting “the task of abating unemployment and achieving a bold use of our resources.” He spoke of shoring up our international allegiances and providing aid to developing countries seeking to establish themselves as democratic states. He spoke of reshaping our military to better meet unconventional threats and mobility and flexibility in response and the need to ensure effective and accurate intelligence.

This sounds so familiar because we are talking about a Moon landing, but yet we are facing all of these domestic, international, and security issues at the same time. But yet we do not lose sight of the need to do something that is beyond the parameters we have known.

President Kennedy spoke of the need to expand efforts in civil defense, what we might now call homeland security, to ensure the safety of our citizens at home. He spoke of renewed calls for arms control and reductions in nuclear arsenals across the globe.

Finally, he focused his concluding remarks on the challenge of space exploration saying:

Now is the time . . . for a great new American enterprise—time for this Nation to take a clearly leading role in space achievement, which, in many ways, may hold the key to our future on earth. He went on to use those words that are perhaps the most familiar from that speech.

I believe this Nation should commit itself to achieving something beyond this decade is out, of landing a man on the moon and returning him safely to the earth.

President Kennedy made that commitment for U.S. leadership in space and set the highest possible goal for establishment of that leadership with the Apollo Program at a time when the Nation faced challenges not unlike those we face today. I believe he did so because he saw that space exploration was something that could elevate the entire national spirit and enhance its broader economy and national security.

As we celebrate the anniversary of the lunar landing, we honor the vision, the courage, and the accomplishments of all of the men and women of Apollo, whether astronauts, engineers, flight directors, or assembly workers, and their families. We thank them for two generations of excellence and leadership in science and technology.

How do we best honor that legacy? We can do it by continuing our Nation’s commitment to space exploration and to sustain the leadership role they won for us in those early pioneering days. We must recognize, as President Kennedy did, that space exploration was an important and urgent national need, not to be short-changed or sacrificed in the face of other pressing economic and security concerns.

We must make the investment needed to ensure that the United States has the ability to launch humans into space. Today, we are looking at a few more missions of our space shuttle, and then we are looking at up to 5 years in which America will not be able to put men and women in space.

This is, as Charles Krauthammer said in a recent article: Five years in which we are going to beg Russia or even China for space on their spaceships to be able to put men and women in space.

Forty years ago we are sitting here with something that changed our country and the world. It gave us new technology. It gave us the dominance of space for our national security purposes. It gave us the ability to take missiles that can now go into a window from miles away and stop the collateral damage and the death of innocent humans when we are in a war situation. It has given us so much. Forty years later we are sitting here with a space program where we are going to have 5 years in which we cannot put men and women into space with our own vehicle. That is not what we should be celebrating on this 40th anniversary. We should be celebrating a renewal of the commitment to space exploration.

We should be celebrating that we are going to finish out an international space station in which many of our international partners invested billions, as have we, and that we are committed to putting people in that space station that is now designated as a national laboratory—our part is—to have the scientific exploration capability to be able to take the next step in medical research that cannot be done on Earth because we have that national lab.
The idea that we would make that investment and then not be able to put people there for 5 years is unthinkable. That is what it is, it is unthinkable.

So I want to remember the words of President Kennedy, and I have to say I want to remember another speech that President Kennedy made. It was at Rice University. He was talking about why we are committed to putting people on the Moon, why we are committed to things that are so visionary for the future.

He said: Why would we put people into space? Why would Rice play Texas? Not because it is easy but because it is hard.

That very next year, Rice tied the University of Texas in football. It was not in the same league as putting men on the Moon. It was not. But he had the vision and he also had the humor to convey it. He knew what made our country the best country in the world was the vision of doing things that would be seemingly impossible and having the capacity and commitment to do it.

That is what President Kennedy led us to do 40 years ago. Today we must renew that commitment. That is the only way we can show we are worthy of all that has gone on before us that led to Neil Armstrong’s famous words: “One small step for man, one giant leap for mankind.”

I hope with all of the remembrances we are making that the real effort that will be made is what Charlie Bolden said when he was in our committee last week. The chairman of the committee asked Charlie: “NASA’s deteriorating. Tell me why we should support it?”

Charlie Bolden, the new Administrator of NASA, said:

I am committed to doing it and doing it right. I have the commitment of Congress to make it happen.

He knows what is right. He is a former astronaut, he is an engineer, he is a great Texan who is a visionary and the person who can implement that vision, and we are going to support him in every way.

I hope all of my colleagues in Congress will do the same thing on the eve of the anniversary of one of the great achievements of America and all mankind.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Madam President, I commend the Secretary from Texas for her commemoration of this spectacular day when Americas went to the Moon. One of them was a fellow named Buzz Aldrin, who lived in the town of Montclair, NJ, the town that I inhabit.

Mrs. HUTCHISON. I thank the Senator from New Jersey because, of course, Buzz Aldrin is going to be at that commemoration tomorrow and has been one of the leaders in trying to make sure America does not fall flag in its enthusiasm and commitment to space exploration and all that it will bring us.

So I thank the Senator for remembering Buzz Aldrin as well because he was a great astronaut and one of the leaders still today for that very important mission.

Mr. LAUTENBERG. It looked as though it was a fairly simple mission. Now as we study it more thoroughly and realize what conditions were like there—the dust was threatening to the people, to the machinery, to the ship that took them there, to the spacecraft that took them there—it was a remarkable event. I join the distinguished Senator from Texas in her tribute.

Mrs. HUTCHISON. I thank the Senator from New Jersey.

Amendment No. 3518

Mr. LAUTENBERG. Madam President, this past Friday, five policemen from a city in New Jersey, Jersey City, were shot by a single gunman. On the previous Wednesday, only a few hundred feet from the steps of this Senate, a gunman fired a weapon at a Capitol policeman. Despite this point in time, after all of that mayhem last week, we have seen the prospect for more gun violence offered by the Senator from South Dakota.

He has offered an amendment that would gut State public safety laws and make it easier to carry concealed weapons across State lines, regardless of the laws of that State. Currently 48 States do allow some sort of concealed carry, but the conditions vary from State to State based on each State’s law enforcement needs and challenges. But under this new idea, this amendment would permit a concealed carry permit from one State to simply override the rules in other States. If I get a permit in State A, I can go to State B, C, D, any one I choose, with a weapon on my back, on my hip, wherever I want it. And I don’t think it matters how many guns one carries.

Understand this thoroughly, that despite a State’s laws on availability of concealed guns, Congress would override them. The State says no. Congress would say: No, we want the Federal Government to be able to tell you what to do. That is unusual, because I think the offeror of this amendment is more often a States rights person. But now he wishes Congress to override State laws and make one’s own State follow this. A person could go from his/her State from making its own decisions on the issue. One’s constituents would not be able to say they don’t want this to happen. In fact, this amendment would allow some people to carry concealed assault weapons, multi-firing, multi-shells firing weapons in States where those assault weapons are not even permitted.

The amendment before us is more about the right of States to make their own decisions about how they keep families in their States safe from gun violence. This amendment would allow almost anyone anywhere to carry a concealed firearm regardless of that State’s law. Strangers coming into town carrying a hidden weapon have an open sesame opportunity to go anywhere they dare please—into town, into a school, into a sporting event, into a shopping mall, anywhere they wish to go regardless of what that State’s laws are. Because under this amendment it is clear: If you have a license for a permit from a State in the Far West and you want to carry it to the eastern part of our country, you can do so. Just take away the public safety laws in that State, and essentially erase the fact that they are now in the laws.

The amendment declares to State governments that they don’t know how to take care of themselves. The gun lobby in Washington is the best place to go to find out what you should or can do. We can’t tolerate such an insuit.

Here are some of the State concealed weapon requirements that would be overridden by the amendment. Eighteen States prohibit alcohol abusers from receiving carry permits, including South Dakota. Under the Thune amendment, these 18 States would have to allow alcohol abusers from other States to carry a weapon into their State. Twenty-four States prohibit those convicted of certain misdemeanor crimes, including Pennsylvania, which does not allow those convicted of impersonating a police officer, to carry concealed weapons. Under this amendment, those convictions would be violated. Nineteen States require those seeking concealed carry permits to complete gun safety programs. Under this amendment, these 19 States would have to allow untrained, untested gun users from other States to carry concealed firearms. It is an outrage.

The proponents of this amendment claim they are respecting each State’s concealed carry laws. That is simply not true. Not one of the Thune amendment it is clear: If you have a license from one State to simply override the rules in other States, that rule would be obviated, and you would have to permit the licensed gun owner from a far different State to come in.

I have a letter from 400 mayors opposed to the Thune amendment. Over 400 mayors wrote to the Congress and said: Vote no on the Thune amendment, including 106 from Pennsylvania, 51 from Florida, 50 from Ohio, 13 from Wisconsin—the list goes on—from Louisiana, from Missouri, from South Carolina, from almost every State in the country that has its own gun laws. They have written and said: Don’t do this.

As these mayors explained in their letters:

Each state ought to have the ability to decide whether to accept concealed carry permits issued in other states.
I ask unanimous consent that this letter be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

JULY 19, 2009.

Re: 400 mayors call on Congress to respect State autonomy and protect public safety by voting no on the Thune Concealed Carry Amendment.

Hon. NANCY PELOSI, Office of the Speaker, Washington, D.C.

Hon. HARRY REID, Senate Majority Leader, Washington, D.C.

DEAR SPEAKER PELOSI AND MAJORITY LEADER REID: As members of Mayors Against Illegal Guns, a bi-partisan coalition of more than 400 mayors representing more than 56 million Americans, we are writing to express our strong opposition to Congressional bills pushing for the Thune Concealed Carry Amendment. If passed, this legislation will infringe upon the ability of state and local governments to protect their citizens with sensible, constitutional, community-specific laws and regulations regarding the carrying of hidden handguns. It will empower gun traffickers, making it easier for them to transport the guns they sell to criminals without being apprehended by law enforcement. Finally, the bill threatens the safety of our police officers by making it far more difficult to distinguish between legal and illegal firearm possession.

The Mayors Against Illegal Guns coalition has long believed that the issue of concealed carry regulation is one best left to the states. Our coalition believes that what state officials, law enforcement and legislators decide are the best policies for rural areas may not be the same policies that are best for cities—and vice versa.

It is very common for states to set standards for carrying guns on city streets that go beyond simply whether an applicant is able to pass a federal background check. Many states, including those with strong gun rights traditions, have enacted common sense concealed carry laws that prohibit carrying by persons regarded as unusually dangerous and criminals convicted of certain misdemeanors, or that require safety training for anyone who wants to carry concealed firearms. For example:

At least 31 states prohibit alcohol abusers from obtaining a concealed carry permit, including Florida, which prevents "habitual drunkards" from carrying guns.

At least 35 states prohibit persons convicted of certain misdemeanor crimes from carrying concealed firearms, including Pennsylvania, which bars carrying by those who have been convicted of impersonating a law enforcement officer and other misdemeanor offenses.

At least 31 states require the completion of a gun safety program prior to the issuance of a permit, including Nevada, which requires a 40-question笔试 and live firing from three different positions with a certified instructor as components of their required gun safety course.

This legislation would eviscerate all of these standards, moving concealed carry permitting to a new national lowest common denominator.

Each state ought to have the ability to decide whether to accept concealed carry permits issued in other states. 9 states have chosen to allow concealed carry by out-of-state permit holders. However, 12 states choose not to recognize any out-of-state permits. And 29 states recognize permits issued by states with equal or higher standards. Any of these options should be available—and it should be each state’s choice to make.

This legislation will also aid and abet gun traffickers. In December 2008, Mayors Against Illegal Guns released a first-of-its-kind report illustrating how traffickers already rely on states with weak laws as a source for the guns they sell illegally. In fact, the report showed that 30% of crime guns crossed state lines before they were recovered, meaning traffickers and straw purchasers often purchase guns in one state and then drive them to their destinations, often major cities hundreds of miles away. This bill would frustrate law enforcement by allowing criminal traffickers to travel to their rendezvous with loaded handguns in the glove compartment. Even more troubling is that a trafficker holding an out-of-state permit would be able to walk the streets of their city with a backpack full of loaded guns, enjoying impunity from police unless he or she was caught in the act of selling a firearm to another criminal.

Finally, this law would not only frustrate our police officers, it would endanger them. Policing our streets and confronting the risks inherent in even routine traffic stops is already perilous enough, and increasing the number of guns that officers encounter. Ambiguity as to the legality of firearm possession could lead to confusion among police officers that could result in catastrophic incidences. Congress should be working to make the job of a police officer more safe—not less.

We urge every member of Congress who respects the prerogatives of local law enforcement, wishes to shield communities from gun trafficking, and strives to protect our nation’s police officers to take immediate action to oppose and vote against this legislation.

Sincerely,

MICHAEL R. BLOOMBERG,
Mayor of New York

MAYOR CO-CHAIR.

Mr. LAUTENBERG. As the mayors make clear, the Thune amendment says: ‘‘Any person holding an out-of-state permit may lawfully carry weapons into other States and across State lines. Supporters of the amendment claim that only ‘‘law-abiding citizens’’ get their hands on concealed weapons permits. That is not true. Over the 2-year period from May 2007 to April 2009, concealed carry permit holders killed seven law enforcement officers with guns. In fact, the Florida Sun Sentinel did a investigation of concealed carry permit holders in Florida and found that Florida granted concealed carry weapons to more than 1,400 people who pled guilty to crimes involving guns; 216 people with outstanding warrants were allowed to carry a gun; 120 people with active domestic violence injunctions; and 6 registered sex offenders.

I worked very hard some years ago—going back to 1986—to get a rule on gun control. I would say those convicted of misdemeanor spousal abuse should be unable to get guns. It was scoffed at by some who were here at that time who said: This isn’t a 3-gun matter. It is nothing too serious and why bother. I am pleased to tell the Senate that with Supreme Court affirmation about 6 months ago, saying that the law prohibiting gun permits to people convicted of certain felonies, domestic and sex offenders to carry guns within their States? I don’t want it in my State.

This is a reckless amendment that would force States from coast to coast to comply with a federal concealed carry law. A few months ago in Alabama, a person holding a concealed carry license went on a murderous rampage that lasted almost a full hour and spanned two communities. First he shot and killed his mother in Coffee County, AL. He then put on a vest loaded with firearms and ammunition, got into his car and drove into town. Once there he shot and murdered 10 innocent people—we can’t forget that—two young fathers, a father and an 18-month-old child. It was later discovered that this killer had qualified and been issued a concealed weapons permit from the Coffee County sheriff’s department.

A few weeks ago Mr. Mclendon’s murderous rampage in Alabama, there was a premeditated shooting spree in upstate New York. The gunman drove his car up to a citizenship services center in Binghamton, NY, barricaded the backdoor with his car, and then burst through the front entrance with two handguns and a bag full of ammunition. In what would become the worst mass shooting since the tragic assault at Virginia Tech, the assailant opened fire, killing an officer, receptionist and wounding another.

He then entered a classroom where he sprayed gunfire, killing 12 more innocent people and wounding 7 others. He then shot and killed his mother and then killed himself.

The killer was no stranger to guns. He was a firearms enthusiast and even though he had been convicted of a misdemeanor, he held a license to carry concealed weapons.

The day after the city of Binghamton was terrorized by a gunman, two police officers arrived at a house in Pittsburgh to quell a domestic conflict between a man and his mother. When the two officers entered the house, they ambushed and killed. The assailant was carrying three firearms and wearing a bulletproof vest and murdered the policemen with an AK-47.

Minutes later, the gunman shot and killed the third victim who arrived at the scene. The attacker held the police at bay for 4 hours before surrendering. It was later learned the killer had been arrested for domestic abuse against his girlfriend but held a concealed weapons permit.

We have to face up to this. This amendment would let more brutal people carry concealed weapons legally—
and not just in their own town or in their own State but in other States and across State lines.

This amendment would also open the floodgates for gun trafficking. A gun dealer who sells firearms to criminals would be free to travel across the country with a car full of loaded weapons as long as the driver had a concealed weapons permit from some other State. The fact is, if the police were to discover the pile of guns in the trigger finger's trunk, the police could do nothing about it.

The prospect of this scenario is no exaggeration. Last year, a report showed that one-third of firearms sold on the black market came from States with weak gun safety laws. The Thune amendment would simply exacerbate this problem and make it easier for gun traffickers to supply known criminals—including terrorists—with weapons.

The scourge of gun violence and gun deaths is a menace this Chamber must take seriously. Think about it. All of us here represent a State—all of us, two per State—and we are being told by one of our Members that what we ought to do is let the Federal Government take care of our people: decide, the Federal Government, how safe our streets ought to be; decide, the Federal Government, to ignore or obviate laws we have on our books, and say: We are going to override their books. We know best what is good for you.

Well, those in other States—whether Illinois or San Francisco, CA, or Houston, TX—do not know better about what we ought to do in New Jersey than we do about them, and we should not allow this to take place.

Just look at the toll gun violence takes on our most innocent and defenseless in our country. Every single day, 8 children die because of gun violence. Another 48 kids are shot. They, however, manage to survive their gun injuries. Think about it: over 50 kids shot each and every day. It is a tragedy in America.

The Thune amendment would place our communities in danger in further danger than we already have. That is why law enforcement leaders—the very people who put their lives on the line to combat criminals and keep families safe—are against the Thune amendment. I have a letter from the International Association of Chiefs of Police opposing this amendment. As the letter explains, the police chiefs urge Congress to “act quickly and take all necessary steps to defeat this dangerous and unacceptable legislation.” The Association of Chiefs of Police—if anybody ought to know what is good for their communities, it should be the chiefs of police.

Madam President, I ask unanimous consent that this letter be printed in the Record directly following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. LUTENBERG. It is no wonder that when police departments are in charge of issuing concealed weapons permits, they are very conservative about whom they allow to have these permits. The amendment from Senator Thune would defer to the weakest—think this through—would defer to the weakest concealed permit laws. So now untrained, amateur gun owners will be free to carry a hidden firearm in other States and across State lines.

Do we want to completely disregard State law enforcement officers’ decisions or do we want criminals wandering our streets with pistols in their backpacks or carrying them on their sides or do we want unstable drivers stuck in rush hour with guns in the front seats of their cars? I do not.

These are critical questions, and they should not be resolved by an amendment tacked onto a Defense authorization bill to be hived off and sent along just on the Defense authorization.

On Thursday, the Judiciary Committee is going to hold hearings on Senator Thune’s proposal. That hearing will give everyone a fair opportunity to get all the facts, hear from both sides of the issue, and learn from the testimony of experts. The hearing will include law enforcement officials testifying against this legislation. They deserve to have their voices heard. We should not shortcut the legislative process and the vital work of the Judiciary Committee.

Before I close, I wish to make one thing clear: This amendment has nothing to do with individuals’ rights to protect themselves in their own homes. A concealed weapons permit is a separate and special privilege that lets gun owners hide their firearms in a jacket or a bag as they travel in the community and go out in public. Whether they are riding in a bus or a car or walking down the street, they can have that weapon.

Why in our world is it necessary to make sure that nobody who want to carry a concealed weapon can go anywhere they want with this weapon? You know what happens. We read about fights occurring in cafes all the time. To just allow people to come in there with weapons and see what happens after alcohol or too much celebration? Bad idea, and we should not allow it.

States and local communities must be allowed to choose who has earned this privilege, based on what is in the best interest of that particular State or community. Unfortunately, this amendment takes the power away from the local community, away from the State capitals, and leaves the decision about what is in the public interest to the gun lobby and the politicians here in town—lobbyists in many cases.

The Thune amendment poses extreme danger to our country, and it blatantly nullifies State laws and State rights in favor of a radical agenda. I strongly urge my colleagues to vote no on the Thune amendment.

I recently was traveling with my wife out West, and we were interested in seeing a particular baseball team play. We know the owners of the team. The hotel had a gun show put in the back of cars. By the way, I carried a gun. It was not concealed. I did it in a uniform during a war, and I loved that weapon. But it had a mission. It had a mission to kill somebody else before they killed me. That is not what we typically see with concealed weapons.

In this case, we were at this hotel gun show, and people were buying ammunition for their purpose. There was lots of activity. Lots of ammunition was being put in there. The State, though, in that case permitted it. There could not be any objection. The State decided what was best for its citizens and its communities, and they did just that. I do not agree with that, but I cannot object. If that State wants to do it that way, they are entitled to do it that way, and who am I, from the State of New Jersey, to tell them how they should conduct themselves in those moments? I have no right to do that.

So here we are. We are faced with an amendment that says nobody in the State knows what is better for their people than does the gun lobby, the NRA, the gun manufacturers. We disagree with that, and I hope we will show the American people we care enough about them and respect their intelligence—respect the fact they have their own structure in their States to take care of their needs as they see them. We do not want to see intruders carrying concealed weapons into those States—not mine, not yours, not anybody’s—who do not pass the test that is required within that State’s jurisdiction before they go around town with their weapons.

EXHIBIT 1
INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE,

Hon. Harry Reid,
Majority Leader, U.S. Senate,
Washington, DC.

Dear Majority Leader Reid:
On behalf of the International Association of Chiefs of Police (IACP), I am writing to express our strong opposition to S. 845, the Respecting States Rights and Concealed Carry Reciprocity Act of 2009. This bill would weaken existing state laws by allowing an individual to carry concealed firearms when visiting another state or the District of Columbia as long as the individual was entitled to carry concealed firearms pursuant to the laws of his or her home state.

It is the IACP’s belief that S. 845 would severely undermine state concealed carry licensing systems by allowing state visitors to carry concealed firearms even if those visitors have not met the standards for
carrying a concealed weapon in the state they are visiting. For example, some states require a person to show that they know how to use a firearm or meet minimum training standards in order to carry a concealed carry license. These states would be forced to allow out-of-state visitors to carry concealed weapons even if they do not meet that state’s training and licensing standards.

It is the IACP’s belief that states and localities should have the right to determine who is eligible to carry firearms in their communities. It is essential that state, local, and tribal governments maintain the ability to legislate concealed carry laws that best fit the needs of their communities—whether self-defense, as well as effective and fair law enforcement personnel.

The IACP urges you to act quickly and take all necessary steps to defeat this dangerous and unacceptable legislation. Thank you for your attention to this matter. Please let me know how we can be of assistance.

Sincerely,

Russell B. Laine,
President.

Mr. LAUTENBERG. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THUNE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Senator THUNE, you have the floor.

Mr. THUNE. Madam President, the business pending before the Senate is the amendment I have offered to the Defense authorization bill. I think it is close to nearing an agreement with both sides about a process for proceeding to have debate on this amendment and then perhaps, hopefully, a vote sometime as early as Wednesday of this week.

I think it is important to note for the record—because many have already or some have already come down already and spoken on this amendment—that I had hoped to offer this amendment as a second-degree amendment to the hate crimes amendment that has been on the floor now for the past week. The Defense authorization bill was brought up early last week. Immediately, this hate crimes amendment was offered. It is a nongermane amendment. It is not relevant, obviously, to the underlying content of the bill.

The Defense bill sets priorities for our national security interests for the coming year. Yet the Democratic leadership chose to make the hate crimes amendment the first amendment to be debated and voted upon. When they did that, it had been my intention to offer as a second-degree amendment the concealed carry amendment, which is now the pending amendment before the Senate. It makes sense in a lot of ways, to me, to do that simply because one of the best ways to help prevent hate crimes and to protect potential victims of hate crimes is to allow them to defend themselves. The concealed carry permit is something most States across the country have. What my amendment simply does is it allows those who have concealed carry permits in their own States to be able to move across State lines to other States that also allow concealed carry permits. Obviously, it would protect the laws of those individual States if there are restrictions on the exercise of that right.

I think it important to be in the debate over this to point out that the victims of those crimes ought to have at their disposal as many ways of defending themselves as is possible. Frankly, there are lots of organizations that have come out in support of this amendment for that reason, because they believe if you want to prevent those types of violent crimes, those types of hate crimes from being committed in this country, one way to do that is to allow individuals who are the potential victims of those types of crimes to be able to have a concealed carry permit in order to deter a crime from being committed.

It is also important to point out that there are a number of arguments that have been put forth this amendment which just, frankly, are not true. First of all, my amendment does not create a national concealed carry permit system or standard. My amendment does not allow individuals to conceal and carry within States that do not allow their own citizens to do so. My amendment does not allow citizens to circumvent their home State’s concealed carry permit laws. If an individual is currently prohibited from possessing a firearm under Federal law, my amendment would continue to prohibit them from doing so. When an individual with a valid concealed carry permit from their home State travels to a State that allows these types of crimes to be able to have a concealed carry permit in order to deter a crime from being committed. It has been suggested that somehow this preempts State laws. That is not the case. In fact, an individual State imposes upon concealed carry laws that have been enacted by that State must be followed by any individual who has a concealed carry permit in their own State. In other words, the way it works is to that State will be required to live under the laws that are on the books in that State.

But it does get at an issue which I think many have raised regarding people who travel across State lines all the time—truckdrivers, for instance, who on any given day take a cargo load from one State across several States in this country and want to be able to protect themselves as they do so. In many cases, they stay overnight in truckstops or pull over for a nap somewhere. Being able to possess a firearm that would enable them to have some level of self-protection and to deter crimes from being committed makes a lot of sense.

So the amendment is very straightforward and very simple. It is simply tailored to allow individuals to protect themselves while at the same time respecting States rights. So individual States can continue to enact restrictions on that, and every State has those. They may be place restrictions, as I think most States—I know my State of South Dakota has restrictions regarding courthouses, schools, and those sorts of places where there are restrictions against concealed carry. Many States have those types of laws which would apply to this amendment. But it also allows people to live under the laws of those States. So I want to make very clear what the amendment does and doesn’t do.

I have heard it said here that somehow this is going to be used to circumvent or to preempt State laws. That certainly is not the case. It does get at the heart of what is a constitutional right in this country. The second amendment of the Constitution allows people to keep and bear arms. That is a constitutional right, and it should not be infringed on. Like I said before, an individual State can enact statutes that impose restrictions on that. That is something most States have, and every State treats the situation a little differently. And an individual should be able to exercise their second amendment constitutional right and be able to travel through individual States as long as they live by the laws of those States. And I think everyone really what the amendment does. It is very simple, very straightforward, and not particularly complicated, as I said. It certainly doesn’t do many of the things that have been proposed here on the floor, so I think it is important to set the record straight.

Obviously, we will have a debate about this in the next couple of days. I think we will probably have a debate on the defense amendment here first, and then we will get to this particular issue. But I hope my colleagues, as they listen to that debate, will do their best to ferret out and to differentiate facts from myth and facts from fiction because there are a lot of statements that are being made that are not consistent with the facts, and the facts on this are very clear.

So I look forward to having the opportunity to make that case and to have that debate be extended. As I said before, I had hoped to be able to offer this as a second-degree amendment to the hate crimes amendment because I think it fits very nicely there. As I said before, it ties in to the overall theme of personal protection, to have the desired effect, which is to prevent many of these crimes from occurring in the first place.
Because the Democratic leadership filled the tree—in other words, precluded or prevented my offering a second-degree amendment to the hate crimes amendment—we are now offering it as a first-degree amendment and understand completely the importance of hasty bill support. So I think, on Wednesday, after we have had a certain amount of time to debate, we will bring it to a vote, and I hope my colleagues would support this.

I think it is an amendment that has broad support. I already have 22 or 23 cosponsors on this amendment from both sides of the aisle, and I hope that number grows because it is common sense. It has been very effective in many States across the country.

We want to use as many tools as we can to deter crime, particularly violent crimes that are committed against individuals in this country. It seems to me it makes sense in having a concealed carry permit that allows an individual who has a valid concealed carry permit in their individual State of residence an opportunity to move freely across this country and to have that constitutional right protected.

With that, Madam President, I yield the balance of my time and look forward in the next day or two, as this issue is debated further, to having a discussion with my colleagues here in the Senate in hopes that we can get this amendment enacted on this bill. So I hope my colleagues will vote for it when the time comes.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I just want to say how much I appreciate the Senator’s efforts. It is consistent with the retired law enforcement officials bill we passed, as I recall, not long ago that allowed them to carry their weapons in other States under certain circumstances. When people are traveling, they many times feel more vulnerable and they feel a greater need to protect themselves.

I think it is a sound and reasonable approach—limited but important—and I thank Senator Thune for offering that amendment.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, notwithstanding the order of July 16, 2009, I ask unanimous consent that the Levin-McCain amendment be considered on Tuesday, July 21, beginning immediately after the opening of the Senate on that day and extending for up to 2 hours, and the vote on the amendment occur upon the use or yielding back of time, as provided for under the previous order which established the parameters of considering the amendment, with the other provisions of the July 16 order governing consideration of the Levin-McCain amendment being in effect; further, that on Wednesday, July 22, at 9:30 a.m., after opening of the Senate, the Senate then resume consideration of S. 1390 and the Thune amendment No. 1618, with the time until 12 noon for debate with respect to amendment No. 1618, and the time equally divided and controlled between Senators Thune and Durbin or their designees, with no amendments in order to the Thune amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Madam President, for the information of the Senate, on Tuesday the Senate will convene at 10 a.m.; therefore, the Levin-McCain amendment is expected to occur around 12 noon. That is expected to be the first vote of the day.

Mr. SESSIONS. Madam President, we have been busy in the Judiciary Committee. Both of our hearings—of our hearings—I have not been able to participate in the debate over the hate crimes legislation. I want to follow up a little bit more on what I said earlier today. I have an obligation to assert a principle that I think is important in Federal criminal law.

I was a Federal prosecutor for 15 years and was very familiar with the jurisdiction issues that are involved in Federal criminal law. We need to do this right. I do not think we have done that right.

The bill has basically been made a part of this Defense bill already, so in one sense I guess the die is cast, but I will share a few thoughts.

To repeat briefly, I will quote from the letter from six, I believe, of the eight members of the U.S. Commission on Civil Rights that was received June 16, was sent to the President and members of the Judiciary Committee. They said:

We believe the MSHCPA—

That is the so-called hate crimes legislation, this is their opinion, six of the eight members—

will do little good and a great deal of harm. Provisions in the bill “are very much a violation of the principles that drove the Bill of Rights, who never dreamed that federal criminal jurisdiction would be expanded to the point where an astonishing proportion of crimes are now both state and federal offenses. We regard the broad federalization of crime as a menace to civil liberties. There is no better place to draw the line than with a bill that purports to protect civil rights.

In other words, this is an official commission of the U.S. Government, appointed by Presidents, and that is what they sent us.

Brian Walsh, a senior fellow at the conservative Heritage Foundation, says this:

Beyond the obvious unfairness of excluding some groups from enhanced protections, such as the elderly, homeless, veterans and children—

They are not given enhanced protections of the hate crimes bill—the proposed law advances an underlying ambitious agenda to punish individuals and groups that hold traditional values.

This law:

. . . lays the groundwork for the concept of “thought crime,” in which someone’s views or beliefs are criminalized. Violent acts are already illegal and punished under criminal law. This law adds penalties based on thought. In order to prove that the defendant holds particular beliefs that motivated a crime, he or she has to read materials and organizational memberships would become key evidence.

Brian Walsh, a senior fellow at the conservative Heritage Foundation, says this:

The criminal justice system is in great need of principled reform . . . this reform should not be driven by some partisan policy. Unfortunately, the HCPA fails to measure up to this standard and would substantially undermine constitutional federalism and the high regard in which the American people would hold Federal criminal law.

The three main problems with this amendment are that:

. . . the Act’s new “hate crimes” offenses are far broader and more amorphous than any properly defined criminal offense should be—

I agree with that, parenthetically. He goes on to say—

—and they thus invite prosecutorial abuse, politically motivated prosecutions, and related, inquisitions. The Act’s “hate crimes” offenses violate constitutional freedoms by asserting Federal law-enforcement power to police truly local conduct over which the Constitution has reserved sole authority to the States. The Act’s “hate crimes” offenses would be counterproductive, for nearly all States have—tough “hate crimes” laws
and the violent conduct underlying the Act’s “hate crimes” offenses has always been criminalized in all 50 states.

Nat Hentoff is a famous civil rights and libertarian attorney, a writer well known in the country as being a passionate advocate for civil liberties from an objective, I would say, point of view. He has respect from both conservatives and liberals, but I guess his background has mostly been on a more liberal approach to law.

He starts out thus:

Why is the press remaining mostly silent about the so-called “hate crimes law” that passed the House on April 29? The Local Law Enforcement Hate Crime Prevention Act passed in a 249-175 vote—17 Republicans joined with 231 Democrats. These Democrats should have been tested on their knowledge of the First Amendment, equal protection of the laws . . . and the prohibition of double jeopardy. . . . No American can be prosecuted twice for the same crime or offense. If they had been, they would have known that this provision for a Senate vote violates all these constitutional provisions.

This bill would make it a federal crime to willfully cause bodily injury—or death—because of the victim’s actual or perceived “race, color, religion, national origin, gender, sexual orientation, gender identity or disability”—as explained on the White House Web site. . . . The Senate gave its approval. A defendant convicted on these grounds would be charged with a “hate crime” in addition to the original crime and would get extra prison time.

The extra punishment applies only to these “protected classes.”

He quotes a Denver, CO criminal defense lawyer:

As Denver criminal defense lawyer Robert J. Corry Jr. asked . . . “Isn’t every criminal act that harms a person a hate crime?”

Then, regarding a Colorado “hate crime” law, one of 45 state laws, Corry says:

“When a Colorado gang engaged in an initiation ritual specifically seeking out a ‘white woman’ to rape, the Boulder prosecutor pursued ‘hate crime’ charges. She was not enough of one of its protected classes.”

Corry adds that the State “hate crime” law—like the newly expanded House of Representatives Federal bill—“does not apply equally,” as the 4th amendment requires, essentially instead:

“Criminalizing only politically incorrect thoughts directed against politically incorrect victim categories.”

Hentoff concluded:

Whether you’re Republican or Democrat, think hard about what Corry adds:

“A government powerful enough to pick and choose which thoughts to prosecute is a government too powerful.”

David Rittgers of the CATO Institute, a libertarian group, said this:

The Federal hate crimes being considered in the Senate undermines the rule of law and shows casual disregard, if not outright hostility, for the principles of limited government and equality under the law. The bill Federalizes violent acts against victims by reason of their actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability.

Never mind that these acts are already prosecuted by the states—45 of which have their own laws—and that all such crimes of this nature are universally perceived as an affront to justice. Matthew Shepard, a gay man brutally killed in Wyoming, has provided one of the rallying cries for passage of this legislation. His killers both received two consecutive life sentences from a state court. James Byrd, Jr., the African-American man dragged to death behind a truck in Texas, is cited as another reason to pass the law. His killers received death sentences or life sentences.

The federal government would also be authorized to prosecute whenever “the verdict or sentence obtained pursuant to State charges left unredressed the Federal interest in eradicating bias-related violence.” While this doesn’t violate the letter of the Supreme Court’s double jeopardy decision, it does constitutionally stifle the free exercise of religion and freedom of speech, and brings with it the very real likelihood of abusive prosecutions. Federal “hate crimes” laws also ignore the fact that the underlying core offense, the causing of bodily injury to another, is already criminalized in all 50 states.

The Research Council says this:

Hate crime legislation is part of the campaign to guess the thoughts and beliefs which lie behind a crime, instead of looking at the crime itself. The Family Research Council believes that all crimes should be prosecuted to the fullest extent of the law, and that every violent crime has some form of hate behind it. All around the country, crimes are being prosecuted in the State justice systems. American justice is being done. There is simply no need for a Federal hate crimes law. Violent attacks upon people or property are always illegal, regardless of the motive behind them. With hate crime laws, however, people are essentially given one penalty for the action they engage in and an additional penalty for the particular and highly selective attitude thoughts that motivated these actions.

Motive-based analysis and intent-based analysis are not the same thing. For example, with the crime of manslaughter, intent-based analysis looks at whether the perpetrator intended the result. Hate crime legislation takes into account what the offender thinks, feels, or believes about the victim regardless of whether the perpetrator intended the result. This is why hate crimes may be referred to as “thought crimes.”

The Traditional Values Coalition says:

The so-called hate crimes bill will be used to lay the legal foundation and framework to investigate and prosecute police, pastors, business owners, Bible teachers, Sunday School teachers, youth leaders, Christian counselors, religious broadcasters, and anyone else whose actions are based upon and reflect the truths found in the Bible, which have been protected by the first amendment.

That is not accurate? Well, they are concerned about that. And they object to the legislation.

The Concerned Women for America note that:

The legislation would violate genuine constitutional rights in an attempt to address a nonissue, create a caste system of victims, violate the spirit of the Double Jeopardy Clause, and the Constitutionally and statutorily extends privileges to individuals who engage in illegal sexual acts even against children.

I would share those thoughts and say that this is why this legislation has been controversial. The predicate for this legislation is the interstate commerce that is very weak. The Supreme Court has already found several Federal statues do not have sufficient interstate nexus to justify prosecuting a crime in Federal court.

I would say if a few people walk out in the pasture and one finds a rock and murders a person, as a Federal prosecutor for 15 years I will tell you, there is no jurisdictionally federally to try and prove that. That is a criminal case in the State court only. And to make it a Federal case, you have to have some sort of peg to hang your hat on, so to speak.

In that case, I do not think there is any. But if you are on a railroad train and you are traveling and you are in interstate commerce, you murder someone, that can be a Federal crime. If you steal from an interstate shipment, that can be a Federal crime. If you murder a postman, that is a Federal crime—or a Federal civil servant, and so forth. Those are Federal crimes. But normal murder, rape, robbery, theft, that occur by the tens of thousands every day all over America are not Federal crimes. They are not prosecutable in Federal court.

The very small number of FBI agents, compared to the massive numbers of police and sheriffs, deputies, and State law enforcement officers is such that there is no way they can ever begin to prosecute or investigate these crimes. They have to focus on those crimes that are uniquely Federal, vindicate a uniquely Federal interest.

With regard to the Civil Rights Act that was passed in the 1960s, it has some similarities, although it is more tightly written. I will conclude with these thoughts:

There was a demonstrable record of failure to prosecute violations of civil rights against African Americans in the South, sad to say, and in other places in this country. It appeared that local law enforcement was ineffective, sometimes unwilling, to vindicate those rights, and so the Civil Rights Act said: If you are going to school or at work, violence against African Americans in the South, if you object to voting and the Federal Government or voting and you are interfered with, that can be a Federal offense.
There was a clear record to justify the need for Federal involvement in those cases. And most of those cases, I think virtually all, have been upheld as being sufficiently tied to interstate commerce to be a legitimate Federal crime to prosecute.

We asked the Attorney General at a hearing recently, can he name any cases? He did not name a single one. But he said in his statement there were four. After the hearing we submitted a question to the Attorney General: Did he have any cases to show that these prosecutions are not being effectively prosecuted locally?

He stood by the four. That is all we ever got over a period, I think it was 5 years. At least that is what I asked him for. And the four cases were very insubstantial. In each one of the four cases prosecutions were initiated. I think in all but one convictions were obtained.

Some people were not happy with the results of the case, and they would have liked the Federal Government to take it over and prosecute it again. But as I said, there are tens of thousands of cases every day, and many victims in those cases felt that the outcome of the case was not sufficient. They would like also for the Federal Government to prosecute it again. But they might not have been in these "special classes" that got this "special benefit" in this bill.

Do you see then what it is all about? It is basically saying that the Federal Government sits up and hovers above the criminal justice system, and then it will decide whenever, based on the length of the chancellor's foot, I suppose, when a case has not effectively resulted in justice.

They said in their answer, they want to make sure that there is justice every time. That is a pretty high goal. I have got to tell you, especially when people might not agree. Juries make decisions. I hope we in this Congress will understand the huge responsibility we have with historic concepts that crimes of a local nature should be prosecuted locally, and that the Federal Government does not need to be involved in everything to try to ensure perfect justice.

Indeed, it is not involved in every case and it never has been. It should not be. I wanted to make these quotes a part of the RECORD, and call on the Members of the Senate as we go forward to make sure that the legislation we pass is consistent with our heritage, which understands that the Federal Government does not have a general criminal power, has only narrow limited enumerated power to make crimes Federal, and we ought not overreach and create a situation in which, according to the U.S. Civil Rights Commission in their letter to us: Every single rape would be a Federal crime because the action would have been carried out as a result of the gender of the person being assaulted.

Ms. Herriot said she had talked with the Department of Justice in previous years about this, before she was on the Commission, and they refused to narrow the language because they wanted that broader language. I think that is too broad. This bill is too amorphous and too broad and should not be done by me. I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. HAGAN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MERKLEY). Without objection, it is so ordered.

Mrs. HAGAN. I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The remarks of Mrs. HAGAN pertaining to the introduction of S. 1473 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions."

Mr. LEAHY. Mr. President, it reflects well upon this body that the Senate last week voted to include the Matthew Shepard Hate Crimes Prevention Act of 2009 as an amendment to the Defense authorization bill with a strong bipartisan vote. This important legislation has also passed the Senate in 2007, 2004, 2003, and 2002. I am hopeful and optimistic that this time it will make it to the President's desk and be signed into law.

This legislation will help to address the serious and growing problem of hate crimes. The recent tragic events at the Holocaust Museum, on top of many other recent hateful and destabilizing acts, have made clear that these vicious crimes continue to haunt our country. This bipartisan bill is carefully designed to help law enforcement and the government respond to this problem. It has been stalled for far too long. The Senate's action last week was the right step and long overdue.

I thank Senator COLLINS, Senator SNOWE, and the other bipartisan co-sponsors for their support. I particularly thank Senator TED KENNEDY, for whom this important civil rights measure has long been a priority, and I commend him for his steadfast leadership over the last decade in working to expand our Federal hate crimes laws. I wish he could have been here for the vote on Thursday, but I know he was proud of what the Senate did. I thank the many staff members who helped with this effort—Roscoe Jones, Joe Thomas, Elise Burditt, Leila George-Wheeler, Matt Smith, Noah Bookbinder, Kristine Lucius, and Bruce Cohen on my staff—as well as the staff for Senator KENNEDY—Christine Leonard and Ty Cobb—who worked so hard on this legislation. I am happy that Republicans were willing to come to an agreement to let this hate crimes amendment move forward. As part of that agreement, today we vote on several additional related amendments from Senator SESSIONS.

Senator SESSIONS proposed an amendment creating a new criminal statute for attacks against U.S. servicemembers. While servicemembers are already appropriately protected by strong legal protections, I agree with the purpose of this amendment, and I appreciate Senator SESSIONS' willingness to work with us to improve it. I will support this amendment.

Senator SESSIONS also proposed another amendment of which his would require that all hate crimes prosecutions be undertaken pursuant to guidelines promulgated by the Attorney General. With the improvements that we worked out, I am happy to support this amendment as well.

Finally, Senator SESSIONS proposed an amendment to apply the death penalty to a broad swath of hate crimes. This amendment, as offered, would have applied the death penalty even to committing child abduction or kidnapping where there was no intent to kill any person. Such a broad application would have clearly violated the Constitution as set out in ruling Supreme Court precedent.

With regard to the death penalty, the Supreme Court recently held that, "As it relates to crimes against individuals, . . . the death penalty should not be expanded to instances where the victim's life was not taken."

The American Bar Association indicated that for the last 100 years, no Senators agree with that sentiment, we should not purposefully pass legislation that we know to be unconstitutional. As a result of my criticism, I understand that Senator SESSIONS will be modifying his amendment, and I appreciate that.

Adding an expansive death penalty provision to hate crime statutes would also add new costs to enforcement since death penalty cases are consistently far more expensive and difficult for the government. Those increased costs could reduce the number of important hate crime investigations and prosecutions the government could conduct.

We should be facilitating more hate crime investigations and prosecutions, not restricting the number the government can bring. I should also note that many proponents of hate crimes legislation, particularly in the House, as well as other influential House Members, strongly oppose the death penalty.

The Leadership Conference on Civil Rights has written us to oppose this death penalty amendment, and I know several of my fellow Senators share my concerns with this amendment.

Senator KENNEDY has proposed a further amendment which would add important guidelines about when the death penalty could be used. I support this commonsense measure.

I hope all Senators will join me in doing everything we can to ensure that effective, meaningful hate crimes legislation can be signed into law this summer.
Mr. NELSON of Nebraska, Mr. President, I come to the floor to express my disappointment that the Senate failed to take advantage of an opportunity to debunk a false argument against the Matthew Shepard Hate Crimes Prevention Act. As originally written, the bill was up to my colleague from South Carolina to provide assurance that this bill could be read to include pedophiles. As the Attorney General has already stated their policy that this legislation does not protect pedophiles. As I quoted above, the Attorney General, the Nation's top law enforcement official, made the Department’s policy crystal clear in Congressional testimony: "the Department does not believe that any of the listed categories could possibly be read to include pedophiles." We can have an honest debate about this bill. I have heard several arguments that should be opposed, and I appreciate and respect the concerns which underlie those arguments. However, I feel the need to reaffirm that in no way is this bill intended to, or can be construed, to protect pedophiles.

Mr. President, I ask unanimous consent that the July 15, 2009, letter from Attorney General Holder to Senator McCONNEEL and myself be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OFFICE OF THE ATTORNEY GENERAL.

Hon. HARRY REID,
Majority Leader, U.S. Senate,
Washington, DC.

Hon. MITCH McCONNEL,
Minority Leader, U.S. Senate,
Washington, DC.

DEAR SENATORS REID AND MCCONNEL: I understand that S. 909, the Matthew Shepard Hate Crimes Prevention Act, is now before the Senate in the form of an amendment to pending legislation. On behalf of the Administration, I strongly urge the Senate to approve this legislation.

As I stated in testimony before the Senate Judiciary Committee on June 25, hate crimes victimize not only individuals, but entire communities. Perpetrators of hate crimes seek to denigrate the humanity we all share, regardless of the color of our skin, the God to whom we pray, or whom we choose to love. Bias-motivated acts of violence divide our communities, intimidate our most vulnerable citizens, and damage our collective spirit. The FBI hate crime incidents in 2007, the latest year for which the FBI has compiled such data. Recent numbers also suggest that hate crimes against certain groups, such as individuals of Hispanic national origin, are on the rise. Between 1998 and 2007, more than 77,000 hate crime incidents were reported to the FBI. That is nearly one violent hate crime every hour of every day over the span of a decade.

Most hate crimes in the United States are investigated and prosecuted by our partners at the state and local level. Federal law enforcement efforts. Second, it will eliminate the antiquated and burdensome requirement under existing Federal law that prosecutors prove that a hate crime was motivated by a victim’s participation in one of six enumerated federally protected activities. Third, it will expand coverage beyond violent acts motivated by actual or perceived race, color, religion, or national origin to those motivated by actual or perceived gender, disability, sexual orientation and gender identity.

Although local law enforcement agencies will continue to play a primary role in the investigation and prosecution of hate crimes, federal jurisdiction is a necessary backstop. Federal resources may be better suited to address crimes involving multiple jurisdictions, and there may be times when local authorities request Federal involvement.

There may also be rare circumstances in which local officials are unable to bring appropriate charges, or when prosecutions, even when successful, do not fully serve the interests of justice. At the same time, these are safer, there are safeguards to prevent legislation like this from detracting from the Department’s internal policies, to ensure that crimes will be prosecuted at the Federal level only when necessary to achieve justice in a particular case.

Some have raised concerns that Congress lacks the constitutional authority to enact this legislation, as well as concerns that it could infringe on First Amendment rights. The Department addressed these issues at length in a June 23, 2009, views letter to Senator Edward Kennedy. As we explained in that letter, the legislation is constitutional and would not infringe on First Amendment rights because it would criminalize no speech or association, but only bias-motivated acts resulting in bodily injury or (attempts to commit such violent acts). Finally, the legislation is carefully tailored to address violence targeting members of communities that have suffered a long history of bias and prejudice.

This Administration strongly supports S. 909, the Matthew Shepard Hate Crimes Prevention Act, and I urge its passage without further delay. Now is the time to provide justice to victims of bias-motivated violence and to redouble our efforts to protect our communities from acts of violence based on bigotry and prejudice.

Sincerely,

Eric H. HOLDER, Jr.,
Attorney General.

Mrs. HAGAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. HAGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.